IN THE

Supreme Court of the United States

OCTOBER TERM, 1908

WHITE RIVER LUMBER COMPANY, Appellant
v. No. 191.
STATE OF ARKANSAS, on rel. H. W. Applegate as Attorney General, Appellee

APPEAL FROM THE SUPREME COURT OF ARKANSAS

Brief for Appellant

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Appellant contended that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, and the decision of the Supreme Court of Arkansas applying same in this case, were void, because repugnant to that part of Section 1 of the 14th Amendment to the Constitution, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws" nor "deprive any person of life, liberty, or property without due process of law." The Supreme Court of Arkansas sustained the validity of said statute and decision.

STATEMENT

Prior to the year 1917, all assessments for taxation in the State of Arkansas, except assessments of property of public service corporations, were made by County Assessors, subject to review by County Equalization Boards. Subsequent to the passage of Act 234 of 1917, as amended by Act 147 of the Act of 1919, the assessments were made by Township Boards, composed of the County Assessor and two reputable and intelligent citizens and taxpayers of each township, subject to appeal to the county court by an aggrieved taxpayer, but not by the State (opinion Supreme Court of Arkansas R. 248).

The assessments of said Township Boards are, therefore, conclusive against the State as to all property owned by natural persons. By the provisions of Sections 10204, *et seq.*, C. & M. Digest, known as the Back Tax Statute, property of corporations can be re-assessed at any time in the manner provided therein.

Section 10204 reads as follows:

"Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of

any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this act shall be construed as retrospective as well as prospective in operation."

Appellant is a corporation organized under the laws of the State of Michigan, authorized to do business in the State of Arkansas, and has for a number of years owned approximately 42,000 acres of overflow timber land lying generally along White River, in the Counties of Monroe, Arkansas, Phillips and Desha, in the State of Arkansas.

These lands were assessed for taxation for all of the years involved herein, by the county and township assessors by the same method that all other lands and all other property in said counties were assessed, and all lawful taxes were paid on said assessments.

On July 25, 1925, appellee filed a complaint in the Chancery Court of Arkansas County, seeking to recover from appellant a large amount of back taxes, alleged to be due upon an intangible value of its capital stock.

Answers to interrogatories attached to the complaint developed the fact that appellant owned no property in the State,

except its real estate and that its capital stock had no intangible value. About the same time, the Supreme Court of Arkansas, in the case of State, *ex rel.* Attorney General v. Lion Oil Refining Co., 171 Ark. 209, held that the capital stock of a foreign corporation which was neither located nor used within the boundaries of the State, could not be assessed for taxation in the State.

Thereupon, on February 11, 1926, appellee filed an amended complaint abandoning the first cause of action sued on, but alleging that the lands of defendant had been grossly underassessed for the purposes of taxation for the years 1915 to 1925, inclusive. The complaint asked for an additional assessment and judgment therein in the sum of $155,850.00 (R. 16). This amendment to complaint did not contain, or have attached thereto, any description of lands.

Issues were made up on this amendment to the complaint, and one or two other amendments, which did not change the issues, except to include the year 1926, and testimony was taken by deposition, the last deposition being taken November 29, 1926.

On January 23, 1927, after all testimony was taken, another amendment to complaint was filed, to which was attached a list of lands (R. 25 to 29). This list contains 191 separate descriptions, or calls, of lands located in 105 different sections and four counties. The list was never submitted to any witness, was never identified as being a list of lands involved in suit, and no mention was ever made in the testimony of any particular tract of land by description, except in one or two instances in an incidental way. The list attached to the amendment divided the lands in Arkansas County into two groups, one group composed of lands referred to as "Big Island" and the other composed of all other lands of appellant in Arkansas County.

Appellant answered (R. 16), setting up, among other defenses, that, during all of the years and in all of the counties set forth in the complaint, its lands had been assessed for taxation on the same basis of valuation as all other property and lands in said counties; that there were large tracts of timber lands

in said counties similar to and of equal value with the lands of defendant, some of which other lands were owned by corporations, but large tracts of which were owned by individuals, which had been assessed on the same basis of valuation as the lands of appellant, or lower; that to enforce Sections 10204, *et seq.* of C. & M. Digest, under which the complaint was brought, in the manner attempted, would result in the lands of appellant being assessed on a greater and higher basis of valuation than other lands of like character and other property belonging to other corporations and individuals were assessed, and that the result of said method of enforcement would be repugnant to the equal protection and due process clauses of the Constitution of the United States.

The rate of assessment for taxation in Arkansas is fixed by the State Tax Commission, and it was stipulated that, for the period involved in this suit, the Tax Commission had ordered an assessment of all property in the State at 50 per cent of the market value (R. 229 and opinion of Supreme Court of Arkansas R. 249).

It was also stipulated (R. 226) that all lands belonging to appellant in the years mentioned in the complaint were assessed in separate tracts as required by statute; that said assessments approximate $4.00 or $5.00 per acre and that the assessments of other timber lands in the counties named for the years mentioned in the complaint were approximately the same amounts per acre.

Appellee, the State, in order to show that the lands of appellant had been underassessed by the assessing officers for the years involved and should be re-assessed by the court on a higher basis, introduced the testimony of two witnesses. Only one of these witnesses undertook to testify as to values of lands at any time. This witness, S. B. Dennison, testified by deposition, taken March 6, 1926 (R. 31), and qualified by stating that he knew what the lands would sell for "in the last, 4, 5 or 6 years," which would not be further back than 1920. He gave it as his opinion that the Big Island lands which had not been cut over were worth $65.00 to $70.00 per acre, and to support that opinion, testified as to three sales of land, one sale being made by Porter to Dennison (the witness) January

31, 1920, of 2,856 acres for a consideration of $25.00 per acre, or a total of $71,402.65 (R. 35 and 36), one sale being made by L. Storthz to Dennison (the witness), December 22, 1922 of 1,700 acres, for a consideration of $30.00 per acre, or a total of $51,000.00 (R. 39), and the third sale by Wylie to Bush, January 15, 1924, of a large body of land situated in several counties, 558.06 acres of which were located in Arkansas County near the lands of appellant, for a consideration of approximately $45.00 per acre, or a total of $25,067.70.

This witness stated that a great deal of land of the defendant had been cut over, some of it had never had any timber on it, and that his values referred only to the lands which had virgin timber and had not been cut over. There was no effort to identify by description or otherwise the lands refered to by witness.

Appellee, also, introduced as a witness C. H. Kirkpatrick (R. 53) who testified that he knew nothing of values, but that he had walked over the lands while hunting and while cruising other lands, and gave his estimates of the average amount of timber which the lands would produce.

Both of these witnesses testified that all of the timber lands in that section were of about the same general character except that the timber on the so-called Big Island group was better than the average, and both testified that a great deal of the land belonging to the defendant had been cut over at different times, some by timber thieves and some by appellant, and that the cut-over lands were practically worthless. The opinion of the Supreme Court finds that "no attempt was made to show from what tracts of land timber had been sold or stolen" (R. 242).

Appellant introduced the testimony of W. W. Keaton, its manager (R. 78), who had formerly been County Surveyor of Arkansas County, and who testified that the approximate area of Arkansas County was 640,000 acres; that about 25 per cent, or 160,000 acres, was timber land; that as a whole, the land of appellant was about the same average kind of land as the other timber lands of the county; that, while several corporations own large tracts of timber lands, that there were

hundreds of individual owners, one individual alone owning 24,000, acres immediately adjoining the lands of appellant, and that the lands as a whole were of about the same general character.

This witness introduced a map, which is on file in this court as an original exhibit, and will show in a graphic manner, the location of the lands of appellant in Arkansas County, and of all other lands referred to in the testimony.

All of the assessors in office in Arkansas County, during the period covered by the complaint, testified at the instance of either the appellant or appellee. All of them testified that they assessed all property in the county, including the lands of appellant, in connection with the township boards authorized by statute. These township boards consisted of two citizens of each township who sat with the assessor in making the assessments for that particular township; that, while they were instructed by the State Tax Commission to assess property at 50 per cent of its market value, they were not able to do so, because, as some of them stated, the township boards would not agree to it; that they did not know at what percentage property was assessed, but estimated the assessments at from 25 per cent to 33 1/3 per cent of actual values, but that, whatever the percentage might be, they endeavored to assess all property of the county on a uniform basis, and did so as far as they knew how; that they did not examine the lands of the defendant, nor any other property which they assessed, but obtained information as to values as best they could and relied to a large extent on the judgment of the township members who had resided in the townships for a long time and were presumably familiar with the property in those townships.

Appellant, also, introduced in evidence certified copies of assessments of Arkansas County, showing the assessments of the lands involved in the sales testified to by witness Dennison. These records show that the land sold by Porter to Dennison January 31, 1920, for $71,402.65, was assessed that year at $11,440.00, or 16 per cent plus of value; that the 1,700 acre tract sold by Storthz to Dennison, December 22, 1922, for $51,000.00 was assessed for taxation at $6,720.00 or 13 per cent plus of value; that the 558.06 acre tract, sold by Wylie to Bush for

$25,667.70, was assessed for taxation in that year at $2,240.00, or 8 per cent plus of value. An examination of the map filed herein, as an exhibit, will show that all of these tracts of land lie immediately adjacent to the so-called Big Island group of the lands of appellant. The tracts of land were sold, bought and owned by individuals, who could not be sued for back taxes.

Appellant, also, introduced a list of 350 transfers for sale of property in Arkansas County, made during the period covered by the complaint, showing total considerations of $3,068,851.64, and that the property covered by said transfer was assessed for taxation during the years involved at $615,106.20, or 20 per cent plus of value. Appellee introduced a list, made along similar lines, showing 240 transfers, with considerations of $534,586.27, with an assessed value of $274,315.20, or 51 per cent plus of value. The lists combined show considerations of $3,410,702.93, assessed at $806,651.40, or 23 per cent plus of value.

The Chancellor of Arkansas County first made a finding (R. p. 230) that "practically all the lands (referring to all lands in the counties) are assessed at from 20 per cent to 33 1/3 per cent of their value." The decree, based on this finding, directed that the lands of appellant be reassessed on a basis of 30 per cent, and, on that basis, that the assessment of the lands on the Big Island tract should be fixed at $15.00 per acre, and on all other lands of appellant at $10.00 per acre subject to certain reductions for timber cut.

On appeal to the Supreme Court, that court sustained the validity of the statute involved, but held that the testimony, except as to the Big Island group, was too indefinite and uncertain to show an underassessment (opinion Supreme Court of Arkansas, R. 249). As to the so-called "Big Island" group, consisting of 7,964 acres, the court held the testimony was more definite and certain, and made the following finding:

> "The testimony is conflicting as to its value, but we think it was clearly shown that these lands were of an average value, during the entire time covered by the assessments in question, of $40.00 per acre, taking into account the timber stolen and the timber sold."

The court, thereupon, ordered that the assessments of said lands be fixed at 30 per cent of that amount, or $12.00 per acre, for the twelve years involved in the complaint and amendments thereto, towit, 1925 to 1926, inclusive, less the valuation on which taxes had been paid.

The so-called Big Island group of lands consists of 34 separate tracts of land located in 18 separate sections (R.27).

The statutes of Arkansas (Sections 9919, 9924 and 10009, C. & M. Digest), providing for the assessment of real property, direct that each tract of land be assessed separately, according to the value of each particular tract.

Act 234 of the Acts of 1917 (now amended by Act 147 of the Acts of 1919, see Appendix) directs that real property shall be assessed each year. Prior to that time, the statutes directed that real property be assessed every two years.

The effect of the back tax statute as construed and enforced by the decision of the Supreme Court of Arkansas, is to discriminate against appellant in the following manner: (a) The lands of appellant were assessed for all of the years in question by the same taxing authorities and by the same manner and method as all other lands and property in the taxing districts involved. Said assessments were conclusive against the State as to the property of all natural persons. The decision of the court ignores the findings of the assessing boards as to the lands belonging to appellant, re-assesses said lands for a period extending back 12 years by methods entirely different from those used by the assessing bodies in assessing the property of natural persons, and by that method has decreed that certain lands of the appellant should be assessed at a rate much higher than other similar lands in the county or taxing districts are assessed, and, in fact, higher than any other timber lands in the county have ever been assessed.

(b) The decision of the court has denied to appellant the right to have its lands assessed according to the value of each separate tract as the lands of natural persons are assessed and has made an assessment based upon the average value of 34 separate tracts, thereby charging some tracts of land of

the appellant with an excessive assessment because of the fact that other lands owned by the appellant are more valuable.

(c) The decision of the court denies to appellant the right to have its lands assessed according to the value of said lands for each year and has decreed that said lands shall be assessed on the basis of an average value for a period of 12 years, thereby charging the lands of appellant with an excessive assessment for some years because said lands may have been more valuable in other years.

(d) The levy of taxes on lands in the so-called Big Island group varies from 20 3/8 mills in 1915 to 29.7 mills in 1926. In 1916 levies on lands in the same group vary from 20 3/8 mills to 22 3/8 mills; in 1917, from 15½ mills to 27½ mills; in 1918, from 15½ mills to 27½ mills; in 1919, from 22.7 mills to 27.7 mills; in 1920, from 25.7 mills to 28.7 mills; in 1921, from 23.7 mills to 28.7 mills (R. 232 and Exhibits p. 230).

It has uniformly been held by the Supreme Court of Arkansas that an illegal charge of any character would avoid a levy of taxes, yet the decision of the court in this case in applying the system of averages for 34 separate tracts of land for 12 years, has necessarily imposed illegal taxes on all lands which were of less value than the average, and this discrimination is not overcome by the fact that other lands might be worth more than the average, because the rates of taxation vary for each year and for each taxing sub-division in which the lands are located.

Appellant thereupon filed a petition for re-hearing, setting up that the decision discriminated against it, or the lands owned by it, in the manner set out and that such discrimination was violative of the clauses of the Federal Constitution above referred to. This petition for rehearing was denied, without opinion (R. 256).

A consideration of the method by which the courts of Arkansas have undertaken to enforce the Back Tax Statute is important in determining the validity of the Act. That method is graphically illustrated by the testimony. We therefore feel justified in submitting as an appendix to this brief a complete abstract of the material parts of the testimony.

SPECIFICATION OF ERRORS

1. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appe'lant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

2. The Supreme Court of Arkansas erred in holding and deciding that Sections 10204 to 10214, inclusive, Crawford & Moses' Digest of the Statutes of Arkansas, were valid. The validity of said sections was denied and drawn in question by the appellant, White River Lumber Company, on the ground of their being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property, without due process of law."

3. The Supreme Court of Arkansas erred in selecting from the lands of defendant 34 separate tracts located in 18 separate Sections, and holding and deciding that said lands so selected should be valued and assessed for taxes for twelve separate years according to the average value of said tracts of land, without requiring each tract of land to be assessed separately according to its value as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

4. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land belonging to appellant, located in 18 separate Sections, should be valued and assessed for taxation for each of the years 1915 to 1926, inclusive, according to the average value of said tracts of land during

the entire period of twelve years, without requiring said land to be assessed according to its value for the two years 1915 to 1916, and for each year from 1917 to 1926, inclusive, as the lands of natural persons in the State of Arkansas are required to be assessed. The validity of said holding and decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

5. The Supreme Court of Arkansas erred in holding and deciding that the assessments of lands of appellant for each of the years 1915, 1916, 1917, 1918 and 1919, as made by the duly constituted authorities charged with the making of said assessments, could be set aside and the assessments for each of said years increased by a system of averages based upon testimony as to the value of said lands subsequent to that time without any testimony as to the value of said lands during each of said years. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State shall "deprive any person of life, liberty or property without due process of law."

6. The Supreme Court of Arkansas erred in holding and deciding that 34 separate tracts of land, belonging to appellant, could be assessed for each of twelve years, 1915 to 1926, inclusive, on the basis of an average value of all of said tracts of land during all of said years without requiring each of said tracts of land to be assessed according to its value for each of said years as the lands of natural persons in the State of Arkansas are assessed. The validity of said decision was denied and drawn in question by the appellant, White River Lumber Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7. The Supreme Court of Arkansas erred in fixing an assessment upon the lands of appellant for the years 1915 to 1926, inclusive, and each of same, higher than the assessments on other lands of like character and value in the taxing district of Arkansas County. The validity of the decision fixing and directing said assessments was denied and drawn in question by the appellant, White River Lumber Company on the ground of its being repugnant to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no State "shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The Supreme Court erred in affirming the action of the trial court in rendering judgment against the appellant, White River Lumber Company.

ARGUMENT

THE BACK TAX ACT OF ARKANSAS, IN PROVIDING FOR THE RE-ASSESSMENT OF LANDS OF APPELLANT BY JUDICIAL PROCEEDINGS, AND THE IMPOSITION OF ADDITIONAL TAXES THEREON, LONG AFTER THE PAYMENT OF TAXES AS ASSESSED BY THE DULY CONSTITUTED ASSESSING AUTHORITIES AND NOT PROVIDING FOR SUCH RE-ASSESSMENT OF LANDS BELONGING TO NATURAL PERSONS, DENIES TO APPELLANT AND OTHER CORPORATIONS IN LIKE SITUATION THE EQUAL PROTECTION OF THE LAWS.

The Back Tax Statute of Arkansas involved herein was before this court in the case of Fort Smith Lumber Company v. Arkansas, 251 U. S. 532, but the only question there involved was the right of the State to tax a corporation on the value of its capital stock as represented by the ownership of stock in other corporations. The court, by a five to four opinion, held that it was within the power of the State, so far as the Constitution of the United States is concerned, to tax its own corporations in respect of the stock held by them in other domestic corporations, although unincorporated stockholders

are exempt. No reference was made to the question of discrimination as between corporations and individuals, except to say that "it is to be presumed *until the contrary appears* (italics ours) that there were reasons for more strenous efforts to collect admitted dues from corporations than in other cases." The question of discrimination in the assessment, or method of assessment of property of like character was not involved.

The facts in the case at bar present an entirely different situation from that presented by the above case, and show the "*contrary*" facts necessary to constitute an unlawful discrimination. Here there is no effort to classify property for taxation, nor to tax corporations for the exercise of any corporate powers or the carrying on of any character of business. Neither does this case involve "admitted dues" or taxes on property which has never been assessed.

The case involves the right of the State, at the instigation of the Attorney General, years after lands have been assessed for taxation by the regular assessing authorities and all taxes, or admitted dues, paid thereon, to have a re-assessment of said lands, by judicial proceedings in a court which may or may not be located in the county where such property is situated, not because there was any irregularity in the original assessment, but merely because the owner of the property is a corporation, while property of like character in every respect, owned by natural persons, is not subject to such re-assessment.

Taxes against lands in Arkansas are imposed *in rem*. The taxes are against the lands and not against the owners thereof. (See opinion of the Supreme Court of Arkansas in the present case, R. 253). The lands of appellant, as well as the lands of all other parties, were assessed for taxation for each of the years involved in this suit by the assessing officers, that is, the county assessors and township boards, in the manner required by law. These assessments were made conclusive against the State as to all property owned at the time of the assessments by natural persons. By this action, the State undertakes to reach back twelve years and increase the assessments on the lands of appellant two to three hundred per cent, not

withstanding the fact that appellant's lands had already been assessed as high as any other timber lands in the taxing districts. This is done merely because the appellant is a corporation, and not because of any difference between the lands of appellant and the lands of other parties.

Testimony taken in the case was confined almost exclusively to Arkansas County. That county contains approximately 640,000 acres of land owned and used as the lands of other counties, 125,000 to 150,000 acres thereof being timber lands. There is no claim, and one could not successfully be made, that there is any essential difference between the lands which belonged to appellant and those which belonged to other parties, either natural persons or corporations, the only claim made being that some of the lands of appellant have more timber on them than some of the lands of other parties.

The only witness introduced by the State to testify as to values was S. B. Dennison, a man engaged in buying and selling timber lands and logging timber, the same business in which appellant is engaged, and it appeared from his testimony that he had bought, owned and operated on lands of like character to the lands of appellant, immediately adjacent thereto; that his lands and the lands of appellant had been assessed on exactly the same basis and for practically the same amounts; yet, the State does not and cannot, under the statute, make any attempt to re-assess the lands of Dennison, or collect any additional taxes therefrom.

Appellant owns approximately 21,000 acres of land in Arkansas County. It was shown by the testimony that L. Storthz, an individual, owns approximately 24,000 acres of timber lands immediately adjacent to the Arkansas County lands of appellant. The land was likewise assessed on the same basis as the lands of appellant, but, because Storthz holds title as an individual and not as a corporation, there can be no re-assessment of his lands. It was, also, shown that there were hundreds of other owners of timber lands and that many of these were individuals.

Witness Dennison based his ideas of value on three or four sales of property. The court, by reference to the map of Arkansas County, brought up as an original exhibit, can easily locate the lands involved in these sales, and will find that they are all immediately adjacent to the lands of appellant.

It appeared from the testimony of the State that all of these lands were good timber lands, sold for from $25.00 to $45.00 per acre; that they all belonged to individuals, had all been assessed at four to five dollars per acre, or 8 per cent to 16 per cent of value; that some of them had been logged and produced more timber than it was claimed any of the lands of appellant would produce, and yet, those lands cannot be re-assessed, regardless of what their value is now, or might have been at the time of the assessment.

The witness Kirkpatrick, who testified for the State, stated that he was familiar with the tracts of land known as the Porter, Storthz and Wylie tracts testified to by Dennison. We quote literally from the record as follows (R. 59):

"Q. Are they about the same character as the White River Lumber Company land?

A. I do not think there is but very little difference in them."

Dennison, the State' expert witness, repeatedly stated that the lands were practically the same. We quote verbatim from his testimony (R. 41):

"Q. How does the value of the timber compare with yours?

A. Well, it runs about the same; all in that section of the country, the timber is about the same."

Also (R. 48).

"Q. These lands about which you have testified, and covered by these deeds, introduced as exhibits to your depo-

sitions, are situated, as I understand along contiguous to or near the White River Lumber Company Lands?

A. Yes, sir.

Q. They are all located in the same territory and are practically the same character of lands?

A. Yes, sir, that is a fact."

A reference to lists of conveyances and assessments filed by both appellant and appellee (R. 162 and 203) will show approximately 500 tracts of lands valued at $3,500,000.00. Practically all of these tracts belong to individuals, or natural persons, and many of them have been assessed at 8 per cent to 20 per cent of value, but, because owned by natural persons at the time of assessment, cannot be re-assessed. These lists do not purport to contain all lands even in the taxing district, but illustrate the fact that the great majority of lands in Arkansas are still owned by natural persons and are assessed for taxation on a basis lower than the lands of appellant were assessed. A recapitulation of these lists will be found on last page of appendix.

In view of these facts, we submit that this case is controlled by the principle announced by this court in the recent case of Quaker City Cab Co. v. Commonwealth of Pennsylvania, decided May 28, 1928, 48 Supreme Court Reporter, 553.

That case involved a statute of Pennsylvania, which imposed a gross receipts tax upon corporations operating taxi cabs, but did not impose such a tax upon individuals operating taxicabs. This court, in holding the statute void, said:

> "The equal protection clause extends to foreign corporations within the jurisdiction of the State, and safeguards to them protection of laws applied equally to all in the same situation. Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances. Kentucky v. Paramount Exch., 262 U. S. 544, 550, 43 S. Ct. 636, 67 L. Ed. 1112. The

equal protection clause does not detract from the right of the State justly to exert its taxing power or prevent it from adjusting its legislation to difference in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary, but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation'."

. . . . . .

"In effect Section 23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed, while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification, to be consistent with the equal protection clause, must be based on a real and substantial difference having reasonable relation to the subject of the legislation. Power Co. v. Saunder, *supra*, 274 U. S. 291. No decision of this court gives support to such a classification. In no view can it be held to have more than an arbitrary basis. As construed and applied by the State court in this case, the section violates the equal protection clause of the Fourteenth Amendment."

The situation in the case at bar is in many respects analogous to the situation described above. Here, the appellant, a corporation, and many natural persons, including Dennison, the witness for the State, his associates Linder Brothers, Bush, Storthz, and others, own timber lands of the same character, located in the same section, so that, in fact, the parties are competitors in business. (This statement does not take into account the many thousands of natural persons who own property in the State.) Dennison goes to the Tax Collector's office, once each year, pays taxes on his property at the amount charged against it by the assessing officers, and obtains a re-

ceipt in full of all present and future liability for taxes. He can then balance his accounts, pay his income tax, settle with his creditors, and use the balance of his profits for any purpose desired. Appellant goes through the same procedure, year after year, but the payment of taxes by appellant means nothing. It is conclusive upon the appellant to the extent that it cannot possibly obtain the return of any part of taxes paid even if its lands are overassessed, but it is not conclusive upon the State, and appellant cannot possibly know when its liabilities as a taxpayer are discharged because it is liable at any time, even many years afterwards (in the present case, more than ten years, and it might be an indefinite period, because the statute of limitations does not run against the State), to be met with a demand by the State to have its property re-assessed by a different method and according to different rules and pay an enormous sum by way of so-called back taxes.

Why is the appellant subjected to this discrimination? Not because of any difference in the character of property which it owns, because the character of the property is not made a test; not because of the character of business in which it is engaged, because the character of business is not made a test, but, solely because it is a corporation.

It will no doubt be argued that appellant should have avoided this difficulty by paying the proper amount of taxes in the first place, but, what more could appellant have done? It paid promptly the full amounts charged against it on the tax books. It could have paid no more, because the collector had no authority to receive any more. If it had asked the taxing authorities to increase its assessments and that had been done, that would not have estopped the State, because the taxing authorities had no authority to bind the State in the assessment of property belonging to corporations, and some future Attorney General might have found a witness, like the witness for the State in this case, to testify to an even higher value.

It will, also, probably be argued that the appellant is not now required to pay taxes on any higher basis than other

parties. We submit that the facts in this case show that this is not true, but we might ask how can any one know whether it is true or not. There has been no judicial investigation into the values of other property. Such an investigation might bring forth witnesses who would testify that many pieces of property were underassessed. The assessors, in considering the property of the county as a whole had already determined twelve times, for twelve years, that the property of appellant was assessed on a basis uniform with that of other property. No one knows what a judicial investigation, covering other specific pieces of property for specific years might develop.

All of the taxpayers who were in office during the 12 year period covered by the re-assessment, testified that they assessed the property of appellant on a basis uniform with that of other property as far as they were able to do so. The efforts to reach uniformity are well illustrated by the testimony of J. C. Cash, who was Assessor of Arkansas County from 1919 to 1923. We quote verbatim from his testimony as follows (R. 101):

"A. That is just as I said in the beginning, you know, that those valuations were established by these members of these boards over the county, that they made all assessments as I understood it. Well, then, in—I am not positive whether it was 19—I think it was 1921, there was one township in this county that raised lots of these timber lands to ten dollars an acre—well, that was the Arkansas Lumber Company, and Mr. Gibson and Mr. Burnett were representatives of that company here and they made a protest. Well, you see, these—the assessors are supposed to call the county board to meet here on about the twentieth of August, and I recall that they came in with their protest and there was a motion made before this board to appoint a man—they claimed—several claimed that these assessments were not right—and that they appoint a man to go over these books and equalize all these assessments. And they appointed Mr. E. J. Spratlin and he changed a good deal of our assessments that year, but how much, I don't know.

"Q. That was done under the supervision of the board?

A. Yes, sir.

Q. And that was an effort to make the assessments uniform?

A. Uniform, yes, sir, all over the county, in these timber lands. And he was supposed—he had been in the real estate business here for many years and he was supposed to know more about the values of these timber lands than any other man, and he was appointed and did go over and tried to equalize all these assessments.

Q. Your township boards were composed of men who lived in the township and were familiar with the lands?

A. Familiar with the lands, supposed to be, yes, sir. There were two men; generally the Justices of Peace of the township were appointed on my board, but they were not always. Sometimes when one that was appointed didn't come, then I appointed a man, myself and swore him in in their stead, a man who lived in the township and supposed to be familiar with it (R. 103).

Q. Now, Mr. Cash, you stated the boards—township boards assessed these lands?

A. Yes, sir.

Q. Did they assess all the lands of the White River Lumber Company?

A. In their respective townships" (106).

All of the other assessors testified to the same effect.

Now, because the appellant is a corporation, and the Attorney General of the State, years after the assessment, has found one witness, an adjoining landowner and competitor of appellant, who will testify that certain lands of appellant were worth more than might be indicated by the assessment, the appellant is subjected to a large judgment for increased

taxes not only for the period during which this witness undertook to testify as to values, but for a period five years prior thereto as to which time there is not a syllable of testimony in the record anywhere as to values.

We submit that no more glaring case of discrimination, by way of taxation as between corporations and natural persons, can be shown. So far as we have been able to find, until the decision of the Supreme Court of Arkansas, now under review, there has never been a decision of an appellate court sustaining a statute authorizing such a discrimination.

The decisions of the Supreme Court of Arkansas, on this question have never been unanimous. Two of the justices dissented from the present decision, because of reasons stated by Mr. Justice Wood in a concurring opinion in State v. Bodcaw Lumber Company, 128 Ark. 505. (See note of dissent, 175 Ark., p. 974). That case involved the collection of back taxes from a corporation, based on an assessment of value of the capital stock of a corporation represented by property owned in another State. It involved none of the questions now under consideration, except that of the constitutionality of the back tax statute. Mr. Justice Smith, who rendered the opinion in the present case and Mr. Justice Hart, now Chief Justice, dissented from the opinion in that case. Mr. Justice Wood, who dissented from the present opinion, concurred because of a former opinion of the court, but in so doing, vigorously attacked the constitutionality of the statute, and, in his opinion, analyzed the decisions of this court which were cited in the present opinion by Mr. Justice Smith in upholding the constitutionality of the Act. That part of the dissenting opinion of Mr. Justice Wood, discussing the constitutionality of the Act, is as follows (R. 522):

> "However, in view of the far reaching consequences that it may have, I have concluded, while my mind is on the statute, to record here my views as to the constitutionality of the Act, which I frankly concede it would have been more appropriate to record in the case of State, ex rel. v. K. C. & M. Ry. & B. Co., *supra*, but which at

that time I was unable to reduce to writing by pressure of other urgent court duties.

"I am firmly of the opinion that the Act under which this suit was brought is unconstitutional, because the Legislature, by striking out the words 'or person' from the original Back Tax Act of 1887, and leaving the Act to apply only to corporations, showed its deliberate purpose to discriminate against corporations and to favor natural persons. While it is well settled that the soverign power may classify for taxation, it is equally well settled that such classification must have some basis in reason to justify a discrimination or distinction between taxpayers. The cases which recognize the right of the soverign to classify, in stating the rule, also recognize the principle that if the classification be clearly unreasonable and arbitrary, and without any just distinction to rest upon, such classification comes within the inhibition of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Williams v. State, 85 Ark. 464; St. L. I. M. & S. Ry. Co. v. State, 86 Ark. 518; Mo. & N. Ark. Rd. Co. v. State, 92 Ark. 1; Ex parte Byles, 93 Ark. 613; Ozan Lumber Co. v. Union County Bank, 207 U. S. 251.

"I contend that any law which shows on its face no other reason for classification than that one taxpayer is a corporation and the other an individual is based upon considerations that have no possible connection with the duties of citizens as taxpayers. Such a statute is purely arbitrary, capricious and oppressive, and is in plain violation of article 16, section 5 of our Constitution, requiring all taxes to be equal and uniform throughout the State. And by violating this provision it also violates the Fourteenth Amendment to the Constitution of the United States, which prohibits the State from denying to any person the equal protection of the laws. 1 Cooley on Tax, 72 et seq., 83; Judson on Tax. pp. 594, 606, 608, 618.

"Such I understand to be the law as announced not only by the ablest authors of text books on the subject of

taxation, but also by the State courts of last resort, and by the Supreme Court of the United States, where the question has arisen in the latter court, under State Constitutions having an equality and uniformity clause similar to ours. State v. Loomis, 115 Mass. 307, 314; Russell v. Croy, 164 Mo. 69; South & North Alabama Railroad v. Morris, 65 Ala. 193, 199; Santa Clara Co. v. So. Pac., 18 Fed. R. 385; North Pac. Ry. Co. v. Walker, 47 Fed. R. 681; County of San Mateo v. So. Pac. Ry. Co., 13 Fed. 145, 150; Gulf, C. & S. Ry. Co. v. Ellis, 165 U. S. 155; Bell's Gap Rd. Co. v. Pennsylvania, 134 U. S. 232, 237; Connolly, v. Union Sewer Pipe Co., 184 U. S. 540, 560; Bradley v. Richmond, 227 U. S. 477.

"In Fletcher v. Oliver, 25 Ark. 289, 295, we said: 'Taxation by uniform rule means by one and the same unvarying standard; uniformity not only in the rate of taxation, but uniformity in the mode of assessment by which the value is ascertained. There must be an equality of burden.' In Ex parte Fort Smith & Van Buren Bridge Co., 62 Ark. 461, we said: 'When the property of a few is taxed according to its value and of all others at one-half its value, then the few are required to contribute double their proportion of the burden. This is manifestly wrong, and justice demands that it be reassessed whenever it can be done in conformity to the laws.'

"Legislation for the collection of 'back taxes' which seeks to lay the burden of paying those taxes upon only one class of taxpayers, while exempting all others, without any reason for such discrimination other than that the one class consists of corporations while the other is natural persons, is equally as obnoxious to the equality clause of our Constitution as would be legislation making the same classification for the original assessment of taxes. The effect of such legislation in either case is to lay the burden necessary to meet the expense of the government upon one class of property owners, while exempting others, based upon no other reason than a mere difference in ownership and in names of owners. Such legislation, in its last analysis, is but a flagrant discrimination

against individuals who may have associated themselves according to law and for lawful purposes in order to transact their business in a common name by which the corporation is designated, and in favor of individuals who may transact precisely the same kind of business as natural persons without a corporate name. To illustrate, the Sunnyside Planting Company is a corporation engaged in the business of producing cotton in Chicot Co. Arkansas. It owns two thousand acres of land in that county which is used for that purpose. Suppose it has failed to pay taxes on such lands for fifty years. John Jones has also two thousand acres adjoining the lands of the corporation, precisely the same character of land and used for the same purpose. He too, has failed to pay the taxes on his land for fifty years. Or say each of these taxpayers has had on hand each year during all these years one hundred mules, ten thousand in money or other of the same kind of personality which they have failed to return for taxation. Can any reason be suggested why a law should be enacted compelling the corporation to pay these back taxes and expressly exempting John Jones from liability therefor? Yet such is the effect of the statute under review. See Wolff Chem. Co. v. City of Philadelphia, 66 Atl. 344, 217 Pa. 215; United States v. Milwaukee Refrig. Tr. Co., 142 Fed. 247.

"The mandate of our Constitution requiring taxes to be equal and uniform forbids legislation that makes 'fish of one and flesh of another' taxpayer who both stand in precisely the same relation to the government as to their taxpaying duties. The act makes no attempt to classify as to any particular corporation or special kind of property that might furnish fit subjects for classification. It is but a bald discrimination between corporations in general and natural persons. Of course, when the sovereign power is fair and just, making no arbitrary and oppressive discrimination in the law itself by which it seeks to compel delinquent taxpayers to bear their proportion of the burdens of taxation, then, if by reason of defective administration of the law one delinquent is caught while another escapes, 'it does not lie in the mouth of the one

called upon to make his contribution to complain that some other person has not been coerced into a like contribution.'

"In the recent case of State, ex rel. v. K. C. & M. Ry. & B. Co., 117 Ark. 606, this court to sustain its view that the act was valid, cited and relied principally upon Weyerhaueser v. Minnesota, 176 U. S. 550, and Florida Cent., etc., Rd. Co. v. Reynolds, 183 U. S. 471.

(These are the cases relied upon by Mr. Justice Smith in the opinion now under review).

"In the Minnesota case the legislation arose under a statute which operated alike upon all taxpayers. There was no classification, hence no discrimination on the part of the sovereign by which one class of delinquents, to-wit, corporations, could be made to pay while another class of delinquents, to-wit, individuals, who stood in precisely the same attitude as to the duty to pay taxes, was exempt.

"The Florida case arose under a statute which provided for the collection of taxes 'upon any railroads and the properties thereof for the years 1879, 1880, 1881'. Here was a classification which all the authorities recognize as perfectly legitimate and reasonable for taxation purposes.

"As is well expressed by Judge Caldwell, speaking for the court, in Northern Pac. R. Co. v. Walker, 47 Fed. R. 681, 'The franchise of railroad companies, and their earnings, and railroad property, may well be classed by themselves for the purposes of taxation and taxed by a different method or rule from that applied to other property.' Of course, all that is said in the opinion in the above cases must be interpreted in the light of the facts upon which the opinion is based. The Constitution of Florida is unlike ours in that it provides only 'for a uniform rate of taxation.' Not only was it reasonable that railroads should stand in a class by themselves, but the act specially mentions the years that such railroad had

escaped taxation. On this feature of the act the court said: 'A wrong intent cannot be imputed to the Legislature. It may have found that the railroad delinquent tax was large' (for three years) 'and the delinquent tax on other property was small and not worth the trouble of provision therefor'. But it could hardly be said of the act under review that in 1913, when the Legislature made the act apply solely to corporations by striking out persons it did so for the reason that it found that corporations, during all the years they had been allowed to do business in this State, had been delinquent in the payment of taxes while individuals had not. The very fact that the Legislature, for all this long period, made a discrimination against corporations shows a deliberate purpose to cast upon them an unequal burden of taxation. Speaking of the effect of the Fourteenth Amendment on such a state of facts, the court further said: 'Doubtless it would prohibit a State from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others where property was similarly situated, but it does not prevent a State from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way.'

"Therefore, I am unable to see how the Minnesota case and the Florida case, *supra*, have any application or give any support to the view that the 'Back Tax' Act of 1887, as amended, is a valid enactment. As I stated in the beginning, the act shows on its face that it is in plain violation of the 'equal and uniform' clause of our Constitution, and, being so, it is also in plain violation of the 'equal protection' clause of the Fourteenth Amendment to the Constitution of the United States."

We do not overlook the fact that three of the Honorable Justices of this court dissented from the majority opinion in the Quaker City Cab Company case, but we confidently submit that the reasons set out for the dissenting opinions do not apply in this case. Here, there is no attempt to tax the busi-

ness done by a corporation, nor to classify property for taxation. The statute applies to all classes of property, whether lands, cattle, merchandise, stock, bonds, or any property subject to taxation and makes the sole test of its application that of ownership of the property.

To illustrate: A corporation operating a dairy is subject to have a re-assessment of its cows, possibly years after the cows are dead. Its competitor, across the road, operated by an individual, or a partnership, is exempt from such liability. A corporation having a merchantile business is subject to a re-assessment of its stock of merchandise and to have its assessment increased on the sole opinion of a competitor, at any time during its existence as a corporation. Its competitor, in an adjoining building, operated and owned by an individual or partnership, is exempt from such liability. A corporation operating a farm is subject to have a re-assessment made not only of its lands, but of its farm implements, live stock and poultry at any time during its corporate existence the Attorney General may elect. Its competitor, an individual or partnership, operating an adjoining farm of equal size and under similar conditions, is subject to no such liability.

Many illustrations of like discrimination could be submitted, yet hardly any would be more glaring than the one shown by the case at bar wherein it appears that the appellant owns 21,000 acres of land in Arkansas County and an individual, L. Storthz, owns 24,000 acres of like character immediately adjoining the lands of appellant; yet the State selects approximately 7,000 acres of the lands of appellant, increases the taxes thereon approximately two hundred per cent for a period of twelve years, while the original assessments of the lands of Storthz are absolutely final and conclusive, and there is no method provided by which such assessments can be attacked or set aside, regardless of how inadequate they may have been.

The highest price ever paid for land, exclusively on Big Island, according to the testimony in this case, was $25.00 per acre. This was paid by Dennison in October, 1924, in a purchase from J. A. Price (R. 47).

Dennison, also, bought 2,856 acres from Porter in January, 1920, for $25.00 an acre. According to Dennison's testimony, he cut 7,000 feet per acre off the Porter land and made $100,000.00 on it (R. 36-37). He cut over 8,000 feet to the acre from the 117 acres on Big Island (R. 32). The highest estimate he made of timber on the appellant's Big Island land was 5,500 feet per acre (R. 33).

The estimate of witness Kirkpatrick was 5,500 to 6,500 feet per acre (R. 53).

Yet, notwithstanding the fact that the Porter and Price lands referred to cut approximately 33 1/3 per cent more timber than that estimated to be on appellant's lands, the court has fixed the value of appellant's lands 60 per cent higher than the sales price of those lands and has made that value retroactive nine years prior to the date of sale of the Price land.

The highest price ever paid for any timber land, in Arkansas County exclusively, so far as the testimony in this case shows, was $30.00 per acre. This was the sale of Storthz to Dennison, in December, 1922 (R. 63). In making this statement, we do not overlook the fact that in the sale of Wylie to Bush, there was a consideration shown of $45.00 per acre, but only about 1-10 of the land involved was located in Arkansas County, and less than 1-10 of 1 per cent was located on Big Island. Yet the court has established a value of $40.00 per acre or $10.00 per acre higher than the highest sales price of any other land in the county, and $15.00 per acre more than the highest sales price of any land on Big Island, and directed that appellant's lands be re-assessed at $12.00 per acre for twelve years past, while the assessments of all of the above lands are left at four and five dollars per acre and these assessments cannot be changed.

With a statute under consideration which permits discriminations of this character the language of this court in the case of Gulf, Colorado & Santa Fe Ry. Co. v. Ellis, 165 U. S. 150, is especially appropriate. The court, by Mr. Justice

Brewer, in the course of a thorough discussion of the principles involved said (pp. 154 and 155):

> "It is well settled that corporations are persons within the provisions of the Fourteenth Amendment of the Constitution of the United States. (Citing authorities.) The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens.
>
> "But it is said that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true (citing authorities); yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subject to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subject, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

There is nothing in the present statute to justify a distinction between corporations and natural persons any more than a distinction between "white men and black men," or between men "possessed of a certain wealth" and others.

We, therefore, submit, in the language of Mr. Justice Wood of the Supreme Court of Arkansas, above quoted, that

the statute is "purely arbitrary, capricious and oppressive," and in plain violation of the equal protection clause of the Federal Constitution.

THE DECISION OF THE SUPREME COURT OF ARKANSAS, MADE UNDER THE BACK TAX ACT, BY SELECTING THIRTY-FOUR TRACTS OF LAND FROM ONE HUNDRED NINETY-ONE TRACTS OWNED BY APPELLANT, AND RE-ASSESSING THE SAME ON THE BASIS OF AN ALLEGED AVERAGE VALUE OF SAID THIRTY-FOUR TRACTS FOR TWELVE YEARS, ON AN AVERAGE BASIS OF ASSESSMENT, WHILE THE LANDS OF NATURAL PERSONS ARE ASSESSED ACCORDING TO THE ACTUAL VALUE OF EACH SEPARATE TRACT FOR EACH SEPARATE YEAR ON THE ACTUAL BASIS OF ASSESSMENT FOR THAT YEAR, DENIES TO APPELLANT AND OTHER CORPORATIONS IN LIKE SITUATION THE EQUAL PROTECTION OF THE LAWS.

We have undertaken to show that the Arkansas statute is void because of its terms. If, however, the court should find that there are any circumstances, such as those under consideration in the case of Fort Smith Lumber Company v. Arkansas, 251 U. S. 532, under which the Act might be valid, or rather, which involve the exercise by the State of a legitimate power, so that the court might not feel it necessary to hold the statute invalid, we still submit that as administered in this case by the decision of the Supreme Court of Arkansas, the Act is void, like in the case of Cummings v. National Bank, 101 U. S. 153, where the court held that a just interpretation of a statute of Ohio might be consistent with the Constitution, but that it might be so administered as to make it unconstitutional, saying (p. 161):

"The evidence we are compelled to say, shows this to be true of the case before us."

The case, also, laid down the following general rule (pp. 157 and 158):

"Independently of this statute, however, we are of the opinion that when a rule or *system of valuation* (italics ours) is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

In the case of St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350, the court said (p. 362):

"But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the State court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State."

Applying these principles to the present case, we find the following situation:

Section 9919, C. & M. Digest, provides that "*each separate parcel* of real property shall be valued at its true market value in money."

Section 10889, C. & M. Digest, requires "*each separate tract* of real property in each congressional township" to be assessed separately.

The manner in which these assessments are to be made is set out in Section 9924, C. & M. Digest, which directs the assessor, in listing property for taxation, to list "the description of each tract by sections, or the largest subdivision of which the same is capable," and requires him to swear that he has assessed "each tract" at its true value in money. These provisions have heretofore been strictly enforced by the Arkansas Courts.

In the case of Bauxite Company v. Board of Equalization of Saline County, 119 Ark. 362, the court held that the unit rule of valuation could not be applied to the assessment of land and that "each separate parcel of real property" should be assessed separately.

In the case of Bonner v. Board of Directors of St. Francis Levee District, 77 Ark. 519, the south-half of Sections 34 and 35 had been assessed as one tract. Taxes were paid on the south half of the south half of said sections, but were not paid on the north-half of the south-half thereof. The north-half was returned delinquent and sold. In passing on the sale, the court said (p. 521):

> "The statutes of this State provide that real property, belonging to the same owner, shall be assessed by section, or the largest subdivision of which the same is capable; and that 'in all cases, when practicable, and the land is owned by one person, or one or more persons jointly, description of lands, both on the tax books and delinquent lists, shall be in tracts not less than one hundred and sixty acres,' and that lands shall be described on the delinquent lists as they are described on the tax books; and impliedly that they shall be sold at tax sale in the same manner. Kirby's Digest, Sections 6976, 7024, 7083 and 7085. The effect of these statutes is to prohibit the collector or other person changing the assessment of lands after the tax books have been delivered to the proper officer. The assessor only is authorized to make the assessment.
>
> "The south halves of sections thirty-four and thirty-five were each assessed as a whole. The value of no particular part was fixed, and from the assessment it could not be ascertained. One part may be worth more than another. For the purposes of taxation they could not be subdivided except by re-assessment. The offer of the north half of the south half of the sections, as separate tracts, for sale, was without authority, and the sale was void."

In the case of King v. Booth, 94 Ark. 306, the court approved the above case, and held (p. 310):

> "In the case at bar an undivided 2-6 part of the land, containing 53 acres, was assessed and sold separately from the other portions of the tract. The part so assessed and sold was attempted to be segregated, and the number of acres contained in it was given, but there is no earmark furnished by which to distinguish it from the other parts of the tract. From the description given its location with reference to the other parts of the tract is not shown; its value as compared with the other parts cannot be ascertained, and we think the description falls within the rule heretofore laid down by this court that where a part of a tract of land is assessed and sold for the non-payment of taxes, and the description is not sufficiently definite to locate it with reference to the remaining portions of the tract, the sale will be void. See Bonner v. Board Directors of St. Francis Levee Dist., *supra;* Beardsley v. Hill, *supra,* and cases cited; Beardsley v. Hill, 71 Ark. 211; Buckner v. Sugg, 79 Ark. 442."

By Section 11, Act 147 of 1919, property owners (but not the State) are given the right to appeal, and when each tract of land is assessed separately, as required by statute, the owner may appeal from the assessment of any particular tract without appealing from the assessment of all.

The statutes further provide, that the values must be determined at definite and stated periods. Section 9924, C. & M. Digest, provides that this period shall be on or before the second Monday in September in the year 1887, and every second year thereafter, which, as applied to this case, means that the values for 1915 and 1916 must have been fixed, as they undoubtedly were, by the assessors on or before the second Monday in September, 1915. By Act 234 of 1917, approved March 12, 1917, effective immediately (see Act as amended by Act 147 of 1919, Appendix), it is provided that the assessment shall be made each year "according to its value on the first day of May" and taxpayers are given the right of appeal from assessments made in each year.

Taxes are levied in each year by the various taxing districts (in the present case, counties and school districts) on the basis of assessments made for that year. Section 9870, C. & M. Digest, authorizes any person having real or personal property assessed for taxation, to appear before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and object to the levy of any specific taxes for illegality.

It follows, therefore, that property owners (except corporations under this statute) can only be required to pay taxes on lands according to the value of each particular tract fixed for the particular year for which taxes are levied.

The Chancellor of Arkansas County clearly recognized this principle in the decree which he rendered, by charging a definite amount of taxes against each particular description of land in each year involved, and providing that a lien be given on each tract of land "for the total amount of taxes due for the years mentioned therein on said respective tracts, *but none of said tracts to bear the taxes due on any other tract;*" but, while this principle is recognized in the mathematical calculations carried forward into the decree it was ignored entirely in the testimony and the finding on which the re-assessments were made and entirely ignored by the decision of the Supreme Court.

The lands of appellant involved in this suit were assessed for taxation in 191 separate tracts, located in 105 different sections in four counties. The lands of the so-called Big Island group involved in this appeal, were assessed in 34 separate tracts (R. Exhibit p. 230). No witness was introduced who pretended to have any knowledge of values prior to 1920. No witness was asked or pretended to testify about the value of any particular tract of land at any particular time. The only estimate of value given by the witness, Dennison, the only witness on that point, was the value at some time not named (but subsequent to 1920) of such of the lands as had not been cut over and still had good timber on them. The Supreme Court of Arkansas has failed to call attention to any testimony from which the court could have found the value of any

specific tract of land in any year, and we challenge counsel for the State to point out any such testimony.

The court found from the testimony that, during the period covered by this suit "large quantities of the timber had been stolen and that, in recent years, large quantities had been sold, and that the value of the lands was proportionately reduced," and, further, that "no attempt was made to show from what tracts of land timber had been sold or stolen." (Opinion of Court, R. 242.) Nevertheless the court, in the absence of any testimony or guide by which it could make a re-assessment on each tract for each year involved, undertook to make a re-assessment by fixing an *average* value of all tracts for all years.

While no witness undertook to testify how much land had been cut over, and witness Dennison testified (R. pp. 144 and 147) "that he did not know how much had been cut on Big Island," the uncontradicted testimony of witness, Keaton, does show that Section 22, and the N. W. Quarter of Section 23, T. 4 South, Range 1 West, containing 549.36 acres, were logged in 1920 (R. 97). Under all of the testimony in the case, and the findings of the Supreme Court of Arkansas, when these lands are logged, they are left practically valueless, yet, in spite of the fact that the uncontradicted testimony shows this tract of land to have been of no value subsequent to 1920, the court, by the average method adopted, has ordered the several subdivisions composing this particular cut-over tract, to be assessed at $6,343.68 for each of twelve years, 1915 to 1926, inclusive. If this assessment had been made by the township board in 1921, appellant would have had the right to appeal from the assessment of these particular subdivisions and undoubtedly could have set aside the assessment. If the land had been sold in 1921 to any other person or corporation and such an assessment had been made against it for that year, or for any subsequent year, that assessment undoubtedly could have been set aside on appeal. The assessment is made by the Supreme Court of Arkansas only because the land was more valuable at some time prior to 1921, or because the appellant owned other lands subsequent to 1921 which were more valuable.

This illustration is used because of the uncontradicted testimony identifying some particular tracts of land which were logged in 1920. The same illustration will apply to all other tracts which had been cut over, or which for any reason had a value in any year less than the so-called average value.

No witness was introduced who pretended to have any knowledge of the value of any of appellant's lands in 1915, 1916, 1917, 1918 and 1919. The only possible way in which the Supreme Court could arrive at any value for those years was to take some value shown subsequent thereto and average back. This the court undertook to do. The assessment, therefore, stands as if the assessor in 1915, in making assessments under the provisions of Section 9924, C. & M. Digest, had assessed the property of all natural persons according to the value of that property for that year, but, on coming to the property of appellant, a corporation, had determined that, because the appellant was a corporation, he would not be bound by the value of the property for that year, but would fix the assessment on the value for that year, plus a prospective average value for the next 12 years, or as if the township board, in making its assessment on the cut-over tract, above referred to, in 1926, had not based its estimate of the value on that year, but had based it on the average value for 12 years last past.

Under the law of Arkansas, as it has existed from the organization of its courts until the decision in this case, the sale of a tract of land for anything more than the amount of taxes due thereon has been held void. To illustrate: In the case of Goodrum v. Ayers, 56 Ark. 93, a sale was set aside because of an illegal charge of twenty-five cents. In Cooper v. Freeman Lumber Company, 61 Ark. 36, a sale was set aside because of an illegal charge of thirty-five cents. In Darter v. Houser, 63 Ark. 475, a sale was set aside because of an illegal charge of twenty-five cents. In Harvey v. Douglas, 73 Ark. 221, a sale was set aside because of an illegal charge of $1.85. Under the method of assessment adopted by this court, there is an illegal charge upon every tract of land for every year that said tract of land was worth less than forty dollars per acre, the average which this court has adopted.

Therefore such a system of making assessments overturns the whole basis of taxation and institutes a method of assessing property of corporations entirely different from that used in assessing property of natural persons.

By reference to page 230 of the record, 2nd Exhibit, it will be seen that the lands included in the so-called Big Island group are located in school districts 36, 37 and 28. By reference to Exhibit A (R. 230, 2nd Exhibit, et seq.), it will be found that the levies of taxes varied considerably during the several years and during the same years of this re-assessment. For instance, take the cut-over lands above referred to, which will be found described in five calls on record p. 230, 1st Exhibit, for the year 1921, when it is admitted that the lands were practically valueless. The levy on these lands for that year was 23.7 mills. Other lands in the same group are assessed at 26.7 mills and 28.8 mills. The average system adopted by the court (and which cannot be adopted as to natural persons) means that these worthless lands are grouped and averaged with the lands in the districts carrying higher levies, and vice versa. There is no possible way by which the court can say that this does not work an injustice to the appellant, or to the taxing districts involved. In the years 1917 and 1918, for illustration, there were four rates of taxation, to-wit, 15½ mills, 22½ mills, 25½ mills and 27½ mills. These rates are all based on values fixed in these years. There is not a scintilla of evidence to support the finding that there was any under-assessment for 1917 or 1918. The court has taken a high valuation shown for later years and applied an average based on such high valuation over the former period of several years, but, in applying average assessments for tracts for several years, it has not and cannot average the levies. Therefore, it has denied to appellant, solely because it is a corporation, the rights to which it is entitled under the statutes regulating the methods of fixing assessments and levies.

An assessment by averages is not countenanced by the statutes of Arkansas, except as to certain commodities, like stocks of merchandise, which are averaged for an annual period, and, consequently, in applying the so-called average sys-

tem in this case, the court discriminated against the lands of appellant; but, if it be assumed that, under any circumstances, an assessment by averages would be good, the decision of the court in this case is so arbitrary as to deprive appellant of its constitutional rights. It is conceded that appellant owns approximately 21,000 acres of land, in Arkansas County, lying practically in a continuous body. If appellant's land is to be assessed on a basis of averages, then the basis should be the average value as a whole, yet the court has arbitrarily selected approximately 7,000 acres of what it says is the best land for the purpose of applying the average system, instead of averaging the good with the bad.

Again, if it is to be assessed upon an average basis as to time, the court has arbitrarily fixed that average over the twelve-year period covered by the complaint, and thereby deprived the appellant of the benefit of an average based on lower values prior to the period mentioned in the complaint, or lower values caused by cutting of timber in future years. In other words, the case before this court is that of the consideration of a taxing system which provides that, as to natural persons, land must be assessed according to the value of each particular tract in the year for which that assessment is made, but that lands of corporations may be assessed according to the average value of any number of tracts to be selected by the assessor and according to the average value of said lands in any number of years to be selected and determined by the assessor.

The injustice resulting to appellant from the adoption of the average theory by the Supreme Court of Arkansas in fixing values has been accentuated and multiplied by the application of the same theory in arriving at the proper basis of assessment. The Chancery Court of Arkansas County, in its findings (R. 230) found that the assessments had been at from 20 per cent to 33 1/3 per cent of value. The decree (R. 233), contains the following finding (R. 234):

> "The lands in Arkansas County have been assessed for taxation at various percentages of their actual value, but the average assessment for the period covered by this

suit has been approximately 30 per cent of the actual value thereof, and the court adopts said average assessment of land in Arkansas County as the proper basis of assessment of all the lands of defendant herein."

The Supreme Court, in passing on this point, said (R. 241):

> "It was stipulated that the State Tax Commission had ordered an assessment of all property in the State at 50 per cent of the market value, but the court found the fact to be that this direction had not been obeyed by the assessing officers, and that property in the counties mentioned had been assessed at only 30 per cent of its value. Witnesses who testified on this feature of the case differed widely as to what per cent of the value had been assessed, some placing it higher and others lower than the 30 per cent found by the court. Without reviewing this testimony we announce our conclusion to be that the finding of the court below on this question does not appear to be against the preponderance of the evidence."

It is apparent, therefore, that the Arkansas Courts were not able to determine from the testimony what the actual basis of assessment had been for any year, but have undertaken to supply this deficiency in the testimony by striking an average for twelve years. Under this theory, if other property was assessed at 20 per cent (one of the figures found by the court) in 1915, the appellant is compelled to pay for that year on a basis 50 per cent higher than it should pay, or, if the assessment for any year was only 25 per cent, the appellant for that year is compelled to pay 20 per cent more than justly due. There is nothing more deceptive than an average system. It seems rather strange that, with the testimony varying at amounts from 20 per cent to 33 1/3 per cent, the chancery court should adopt for all time the basis of 30 per cent, near the highest amount given, and that the Supreme Court should affirm an imposition of taxes on that basis, not because it found the amount to be correct, but merely because the finding "does not appear to be against the preponderance of the evidence." In other words, by substituting this judicial method of assessment against the lands of appellant, the burden of proof is

cast on the appellant to show that the assessments made by the duly constituted assessing bodies of the State for a period extending twelve years back, were fair and just. In the case of a natural person, no amount of positive uncontradicted testimony would be sufficient to set aside the assessment. Can any more flagrant case of discrimination be imagined?

The whole theory is nothing more than guess work, and is so unreasonable as to amount, not only to a denial of the equal protection of the laws, but to a taking of property without due process of law, and so far as we know, no court, except the Arkansas Court in this case, has ever held otherwise.

All of the statutes covering the assessment of property provide for assessments by the county and township officers, with the right of appeal on the part of the taxpayer to the courts of the county in which the property is situated. By the statute here under consideration, corporations are liable to be sued and have their property re-assessed by courts in counties in which any part of it is situated. The present case, for instance, involved property in four counties. The statute, as construed by the Supreme Court, authorized the Chancery Court of Arkansas County to make a re-assessment of the property in all of the counties. This is just another one of the discriminations caused by the methods applied to the re-assessment of property owned by corporations under the Back Tax Statute and not applied to the assessment of property owned by natural persons.

In the case of Power Manufacturing Company v. Saunders, 274 U. S. 491, the court held void a statute of Arkansas, which permitted a foreign corporation to be sued in any county in the State, while domestic corporations were required to be sued in counties in which they did business, or their chief officer resided, and natural persons were required to be sued in counties where they resided, or might be found. The court condemned the discrimination in the following language (p. 492):

> "It is conceded that the statutes neither permit a domestic corporation to be sued in a county in which it does

no business and has no office, officer or agent, nor permit a natural person to be sued in a county in which he does not reside and is not found. On the contrary, they confine the admissible venue as to both to counties in which the defendant is present in one of the ways just indicated. But a foreign corporation is differently treated. If it be present in a single county, as by having a place of business there, it is made subject to suit not merely in that county, but in any of the 74 other counties although it be not present in them in any sense.

"We think it very plain that the statutes discriminate against foreign corporations and in favor of domestic corporations and individuals, and that the discrimination is not theoretical merely, but real and substantial."

Further, in answering the suggestion that the statutes merely provided different method of procedure, the court said (p. 495):

"It of course rests with the State to prescribe the venue of actions brought in her courts. But the exercise of this power, as of all others, must be in keeping with the limitations which the Constitution of the United States places on State action. Procedural statutes are not excepted, but must fall like others when in conflict with those limitations. This is illustrated in a recent case where a statute of Arizona forbidding the granting of injunctions in certain situations was held to be in conflict with the equal protection clause of the Fourteenth Amendment and invalid, notwithstanding a contention that it was merely a procedural provision excluding a particular remedy in equity but leaving remedies at law open, Truax v. Corrigan, *supra*, pp. 322,330. Further illustration is found in a still later case where a Wisconsin statute subjecting foreign corporations to a burdensome procedural requirement not laid on other litigants was pronounced invalid under the same constitutional provision, Kentucky Finance Corporation v. Paramount Auto Exchange Corporation, 262 U. S. 544. And on turning to State decisions we find direct rulings that venue provisions must conform to the equal protection clause and

are invalid where they discriminate arbitrarily against either individuals or corporations, Growers' Fruit Growing Union v. Kern County Land Co., 150 Cal. 466, 474-475; McClung v. Pulitzer Publishing Co. 279 Mo. 370."

In the case of Kentucky Co. v. Paramount Auto Exchange Corporation, 262 U. S. 544, cited in the above opinion, the court, in holding the statute of Wisconsin void, said (p. 551):

> "Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin—a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary."

The present statute has required appellant to submit to a re-assessment of its property by a method entirely different from any which could be applied to natural persons in the same situation, with the result that appellant is confronted with a judgment for thousands of dollars which admittedly could not have been rendered against "an individual" defendant "in the same situation. The discrimination" is "essentially arbitrary."

In Kansas City Southern Ry. Co. v. Road Improvement District, 256 U. S. 658, it appeared that the assessors of a highway improvement district adopted a different method in assessing benefits to railroad property from that used in other cases. This court held the assessment void, and said (p. 661):

> "Obviously, the railroad companies have not been treated like individual owners, and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law." • • • "Equal protection of the law must be extended to all."

We submit in this case that the appellant has not been treated like individual owners, but on the other hand, by the method of re-assessment adopted by the court, has been discriminated against in every essential particular so that we

might paraphrase the above quotation by saying "obviously the appellant here has not been treated like individual land owners," and "the discrimination is so palpable and arbitrary as to amount to a denial of the equal protection of the law."

Respectfully submitted,

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APPENDIX

Crawford & Moses' Digest

BACK TAX LAW

Section 10204. *Proceedings.* Where the Attorney General is satisfied from his own investigation or it is made to appear to him by the statement in writing of any reputable taxpayer of the State, that, in consequence of the failure from any cause to assess and levy taxes, or because of any pretended assessment and levy of taxes upon any basis of valuation other than the true value in money of any property hereinafter mentioned, or because of any inadequate or insufficient valuation or assessment of such property, or undervaluation thereof, or from any other cause, that there are overdue and unpaid taxes owing to the State, or any county or municipal corporation, or road district, or school district, by any corporation upon any property now in this State which belonged to any corporation at the time such taxes should have been properly assessed and paid, it shall become his duty to at once institute a suit or suits in chancery in the name of the State of Arkansas, for the collection of the same, in any county in which the corporation owing such taxes may be found, or in any county in which any part of such property as may have escaped the payment in whole or in part of the taxes as aforesaid may be situated, in which suit or suits the corporation owing such taxes or any corporation claiming an interest in any such property as may have escaped taxation as aforesaid, shall be made a party defendant, and the Governor is authorized to employ any attorneys that may be necessary to assist the Attorney General in such suits; provided, that this Act shall be construed as retrospective as well as prospective in operation. Act March 12, 1913, p. 724.

Section 10205. *Compensation of Special Counsel.* In all cases where the Governor has appointed, or may hereafter appoint, special counsel under Section 10204 to assist the Attorney General in the collection of overdue taxes from corporations, such special counsel shall receive a reasonable compensation for his services, dependent upon recovery, and to be fixed by the chancery court trying said cause; but in no

case shall such counsel receive more than twenty per cent of the amount recovered. Act May 30, 1911, p. 324.

Section 10206. *Warning Order.* If the Attorney General shall certify on the complaint to be filed in said suit that he can not find any one in the State upon whom service can be had so as to bind said corporation according to existing laws, the clerk shall enter a warning order against said corporation, requiring the defendant to appear in said cause on the first day of the next term of the court to answer said complaint, which warning order shall be published and proved as other warning orders are required to be published, and proved by law, and with the like effect. Act March 1, 1887, p. 33, Section 2.

Section 10207. *Complaint to Describe Property.* Said complaint shall describe as nearly as may be the property on which said taxes have accrued, and the State, counties, school districts and municipal corporations aforesaid shall have a lien on said property from passage of this act, for the payment of said overdue taxes, to be enforced by suit as herein provided. Id. Sec. 3.

Section 10208. *Procedure.* On a final hearing the court shall determine the amount of said State, county, school district and municipal taxes, and the penalties and costs due on the same, if any, and to whom said taxes are payable, and shall decree payment thereof accordingly, and where for any reason the property on which said taxes may have accrued shall not have been assessed, the court shall refer the matter of such assessment to the assessor of the county in which said property may lie, who shall make his assessment for any past year or years mentioned in the order of reference, and shall return the same into court; and in case the property shall belong, or have belonged, to any delinquent railroad company, the court shall in like manner refer the assessment of said property to the proper officer or board of officers or commissioners, whose duty it shall be, at the time of the making of said reference, to assess property of like kind, and they shall report their assessment to the court, and the court shall have power to hear testimony and to change said assessment as justice and equity may require. Id. Section 4.

Section 10209. *Enforcement of Lien.* On such final hearing the court shall render a decree declaring and enforcing said lien for taxes, by sale of the property to which said taxes may have attached. In case of a railroad, the lien shall be decreed against the whole line of the road, including the main line and side-tracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the State belonging to such corporations. The court shall decree the said taxes shall be paid within three months after rendering said decree, and that in default thereof said defendant shall pay a penalty of ten per centum on the amount of said taxes. Id. Sec. 5.

Section 10210. *Sale of Property.* The sale of any property under said decree shall be made in the same manner as other sales are made under other decrees foreclosing liens in chancery, and with like effect, and the court shall distribute any fund accruing under this act among the State, counties and municipal corporations and school districts entitled thereto by law. Id. Sec. 6.

Section 10211. *Redemption.* All parties having any interest in any property sold under this act may redeem the same at any time within one year from the date of said sale, by paying into court the amount of said decree and penalty on the same, at the rate of twenty-five per centum per annum. Id. Section 7.

Section 10212. *Deed.* In case no such redemption is made, the court shall cause a deed to be executed to said purchaser, conveying said property to him absolutely, and said deed shall have the same force and effect that are given by law to other deeds for property sold under decree in chancery. Id. Section 8.

Section 10213. *Suits to Have Precedence.* Suits brought under this act shall have precedence of all other suits in the courts in which they may be pending and shall be disposed of without unnecessary delay, and no appeal from any decree rendered in any suit brought under this act shall be taken after thirty days from date of such decree. Id. Sec. 9.

Sec. 10214. *Decree for all taxes.* The decree rendered in said suit shall be for all taxes due the State, and to the counties, cities and other political subdivisions of the State, and shall not be confined to the taxes due in the county in which the suit is brought. Id. Sec. 10.

OTHER STATUTES CONSIDERED

Section 9919. *Rules for Valuation.* Each separate parcel of real property shall be valued at its true market value in money (a), excluding the value of crops growing thereon; but the price at which such real estate would sell at auction, or at a forced sale shall not be taken as the criterion of such true value. Each tract of land belonging to this State, or to any county, city, town or charitable institution, whether incorporated or unincorporated, and saline, swamp, seminary, school or mineral lands held under a lease exceeding five years, and not exceeding ten years, shall be valued at such price as the assessor believes could be obtained at a private sale for said leasehold estate. Personal property of any description shall be valued at the usual selling price of similar property. at the time of listing. If any such property shall have no well fixed or determined value in that locality at the time, then the same shall be appraised at such price as in the opinion of the assessor could be obtained therefor at such time and place. (b) Investments in bonds, stocks, joint stock companies or otherwise shall be valued at their value in money, and the quotations and selling price thereof may be considered in determining their values. Money, whether in possession or on deposit in this State, or out of it, subject to the order or control of such person listing, shall be entered in the statement at the full amount thereof. Every credit for a sum certain payable either in money, property of any kind, labor or service, shall be assessed according to its true value. If for a specified number or quantity of any article or articles of property, or for a certain amount of labor, or for services of any kind, it shall be assessed according to its true value. Annuities or moneys receivable at a stated period shall be rated at the price which the same may be worth in money. Where the fee of the soil in any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any mineral

therein in another or others, the same shall be valued and listed agreeably to such ownership, in separate entries, and taxed to the parties owning the same, respectively.

Section 9924. *When and How to Assess Real Estate.* Every assessor on or before the second Monday in September, in the year eighteen hundred and eighty-seven, and every second year thereafter, shall make out and deliver to the clerk of the county court a report (a) in tabular form, contained in a book to be furnished him by such clerk of county court, of the amount, description and value of real property subject to be listed for taxation in his county, and the amount and description of all lands belonging to the United States and to the State of Arkansas; also of all other lots, parcels or tracts of land exempt from taxation, which returns shall contain:

FIRST: The names of the several persons, companies or corporations in whose names the several tracts of real property, other than property situate in incorporated cities and towns, in each congressional township within his county, shall have been listed, and in appropriate columns, opposite each name, the description of each tract by section, or the largest subdivision of which the same is capable, designating the number of the section and the part thereof, and the congressional township or survey, and the value of each tract determined by the assessor, lands belonging to the United States or to this State not to be valued.

SECOND: The names of several persons, companies or corporations in whose names the several lots of real property in each town or city in his county shall have been listed, and in appropriate columns, opposite each name, the description of each lot and value as determined by the assessor, and such description shall designate the town or city the number of lots and parts thereof; and, if part of a lot is listed, it shall state the number of feet along the principal street on which it abuts. If the name of the owner of any tract of land or lot be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot. In making such return, each separate tract of land in each congressional township shall be placed according to the numerical order of the section, and each town or city lot according to the numerical

order of lots and blocks, which returns shall be as near the following form as practicable (b):

Names of Owners	Part of Section	Section	Township	Range	No. of Acres	Value	No. of School Districts	No. of Acres U. S. Lands	No. Acres State Lands	No. of Acres Otherwise Exempt	Value

With the following affidavit:

I, _____, assessor, do solemnly swear that the foregoing is correct, and that I have appraised each tract or lot of land, except United States or State lands, at its true value in money, and not at what it would bring at auction or at a forced sale, so help me God.

_____

Assessor.

Subscribed and sworn to before me this _____ day of _____ 19__.

_____, Clerk

Section 10009. *Clerks to Make Tax List.* The clerks of the county court shall make out in books prepared for that purpose, in such manner as the Auditor of State shall prescribe, a complete list or schedule of all the taxable property in his county, and the value thereof, as equalized and arranged in the following form:

Each separate tract of real property in each congressional township in his county, other than town or city property, shall be contained in a line, or lines, opposite the names of owner or owners, arranged in numerical order.

Each separate lot or tract of real property in each city or town shall be set down in a line, or lines, opposite the names of the owner or owners, arranged in numerical order.

The aggregate value of personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of each person, company or corporation, within each congressional township, shall be placed in a column opposite the name of the owner, person, company or corporation in whose name the same is listed; the names of the persons in each school district who are not residents of any incorporated town, city or village shall be placed in alphabetical order in one list, and the names of the persons who are residents of any incorporated town, village or city shall be entered in another list in alphabetical order.

Section 9865. *Basis of levies.* All levies of taxes in cities and towns shall be based upon the appraisement of the county assessor, as equalized for the levy of State and county taxes, and placed upon the tax books by the clerk of the county court, and the same shall be collected in the same manner and by the same person that county taxes are collected. Id. Sec. 11.

Section 9866. *Levying Court.* The county court of each county, composed of the judge and a majority of the justices of the peace of each county, shall meet annually, on the first Monday in October, for the purpose of levying the county taxes or making appropriations for the expenses of the county. Act March 28, 1887, Section 1, p. 143.

Section 9870. *Who May Object to Levies.* Any person having real or personal property assessed for taxation may appear in person or by attorney, before the county court at the time of the levy of taxes by it, or at the succeeding term thereafter, and, by petition or remonstrance, object to the levy of any specific tax for illegality, and may, by sworn petition, set forth and show any facts upon which such illegality rests.

If the same be based upon facts, it shall be the duty of the court to determine both the law and the facts presented, and for that purpose shall hear any testimony offered; and if the court should rule against the objection so presented, the party so objecting to such levy may appeal from such ruling to the circuit court of the county, and, upon giving bonds, within ten days, with good and sufficient security in double the amount of specific tax levied upon the property of the party objecting subject to the approval of the court, conditioned for the payment of such tax should it be decided to have been lawfully levied, the same shall operate as a supersedeas of the collection of the same. Provided, it shall not operate to prevent the same being placed upon the tax book. Said bond shall be given to the State of Arkansas, and, in the event such levy shall finally be declared illegal, such judgment shall operate as an acquittal to the collector and his securities for the noncollection of the tax. If the tax be finally declared legal, the collector shall immediately proceed to collect the same as in other cases, or by action on the appeal bond. And provided further, any taxpayer feeling himself aggrieved by any such levy may, at any time before the returning of delinquent taxes by the collector for that year, appeal as hereinbefore provided. Act March 28, 1887, Section 12.

ACT 147 OF 1919

AN ACT to Provide for the Assessment and Valuation of the Taxable Property of the State of Arkansas and for Other Purposes.

Section 1. Provides for township board of assessment and valuation.

Sec. 2. County Judge to file names of members of boards.

Sec. 3. Arkansas Tax Commission shall prepare and furnish blanks, records, etc. (Not material).

Sec. 4. Fixes time for assessment; provides for publication of notices.

Sec. 5. Duty of boards of assessors.

Sec. 6. Manner of listing property owned by non-residents. (Not material).

Sec. 7. Delinquent assessments; penalty. (Not material).

Sec. 8. Delinquent personal property; how assessed. (Not material).

Sec. 9. Compensation of township members of the board of assessment and valuation. (Not material).

Sec. 10. Property owners to take oath to correctness of list.

Sec. 11. Persons aggrieved may appeal to county court.

Sec. 12. Assessors to call annual meeting of the members of the board of assessment and valuation. (Not material).

Sec. 13. Assessor required to file biennial report of his assessment of real estate. (Not material).

Sec. 14. Assessor required to make annual report to Arkansas Tax Commission. (Not material).

Sec. 15. Compensation of assessors. (Not material).

Sec. 16. Manner of listing property erroneously left off of tax rolls. (Not material).

Sec. 17. Penalty for failure to comply with provisions of this Act. (Not material).

Sec. 18. Repeals Acts 234 of 1917 and 124 of 1913 and all laws in conflict. Emergency declared; effective after passage. (Not material).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

Section 1. On or before April 1st, of each year the county judge of each county in this State shall appoint two reputable and intelligent property owners of each township in the county, and in each ward of cities of the first class, who shall have been residents of said township or ward for a period not less

than three years prior to said appointments who, together with the county tax assessor, shall be known as the township board of assessment and valuation for said township or ward. The assessor or his deputy shall administer the same oath to each member of said board as subscribed to by him, before any work shall be done by them. When any member of said board shall fail to appear for service for any cause, the assessor or his deputy shall appoint property owners who shall take the oath herein provided, and perform the duties and receive compensation provided for the members of said boards.

Sec. 2. Each county judge shall, on or before the 1st day of April, file in duplicate with the county clerk, the names and postoffice address of the members of said board appointed by him; and, the county clerk shall retain the original for the files of his office and forward the copy to the Arkansas Tax Commission, on or before the second day of April each year.

Sec. 4. All property in this State shall be assessed by the duly authorized authorities according to its value on the first day of May or average as required by law, and the county assessor shall publish his notice of dates on or before the second Monday in April, annually, in some newspaper published in said county, and by posting notices in one or more places in each township or ward, that he will, beginning on the first Monday in May, and on a day therein named, attend at the usual voting places in said township or ward, and such other places as he may designate, for the purpose of taking a list of the real and personal property of each resident of said township or ward; also, the per capita tax and postoffice address of such as are liable to pay said tax, and said assessor shall remain in each township or ward at least one day, and one day extra for each seventy-five voters if he deems necessary. Upon application by the property owner, the assessor shall furnish appropriate printed blanks upon which to list and report the property owned by such party subject to taxation.

Sec. 5. Each board shall, during the time advertised for said township, list and value all real estate situated in said township, and shall list and value all personal property presented to the board by the owner, his agent, or by lists furnished by the owner or his agent properly verified. Each

owner of personal or real property in any township in this State shall be required to list their property to be valued for taxation with the board of such township during the time said board is sitting; each property owner shall be required to answer upon oath, all questions propounded to him by said board, and to furnish proof demanded as to purchases, sales, transfers, improvements, accounts, notes, stocks, bonds, bank notes, bank deposits, marginal and exchange profits, invoices, insurance carried, or any other information requested by said board.

Sec. 10. Before any person shall list his property for taxation, the assessor, or one of the members of said board, shall administer to said person, the following oath, towit: "You do solemnly swear, or affirm, that you will render a true and complete list of all the property subject to taxation, either tangible or intangible, in or out of the State, that you are required to list in your own name or right, or that of any other person or owner for whom you may be required by law to list for taxation; and that you will make true and perfect answers to any and all questions that may be demanded of you with reference to the amount, kind, quality and value of such property, and any other inquiry by which the true amount, kind and value of such property may be ascertained, so help you God."

Sec. 11. Any person who shall be aggrieved by the action of the board of assessment and valuation, in valuing their property, may appeal to the county court; *provided*, to take such appeal, the owner shall file petition and affidavit of appeal with the county clerk, for which $1.00 shall be paid as cost to the clerk, who shall summon the members of the board of such township, immediately, and issue such process as said board, or the county judge may request for witness and evidences of value and amount of property; *provided*, all appeals must be filed on or before the 25th day of September of each year and shall have preference over all matters in said court, and shall be heard and order made on or before the third Monday in October; *provided*, no reduction shall be allowed except on evidence corroborative of that of the owner. The clerk shall mail statement to the Tax Commission on or before the third Monday in October each year, showing amount of deduction allowed by the court on appeals.

TESTIMONY

S. B. DENNISON, a witness for plaintiff, testified by deposition taken March 6, 1926, in substance, as follows (R. 30).

I live at Stuttgart, Arkansas, and have lived there three and a half years. Before that, I lived at St. Charles, Arkansas County, twenty years.

I buy and sell timber lands, and have been in that business about nine or ten years. I am familar with the values of timber lands in Arkansas County, and have bought and sold several tracts in that county, and in Phillips and Monroe Counties. I never had any dealings in Desha County.

"Q. There are approximately eighteen thousand, five hundred acres of land belonging to the White River Lumber Company in Arkansas County, and approximately twelve thousand, five hundred in Desha County, approximately seventy-five hundred in Phillips County, and approximately four thousand in Monroe County, are you familar with those lands, Mr. Dennison?

A. I am not familar with any of the land in Desha County and very little of it in Phillips County" (R. 31).

I am familar with the lands in Arkansas and Monroe Counties. I have been on those lands a lot, and have bought land adjoining those, and have logged and sold logs in there for the last 7, 8 or 9 years. I bought some land for twenty-five or thirty dollars an acre in there a few years ago. I know what the lands would sell for in the last 4, 5 or 6 years. They own a piece in Big Island Chute, what we call Big Island there in Arkansas County, that is a very valuable tract, I think the best piece of timber land in the whole country. I think there is somewhere around 7,200 acres that they own on that Island.

"Q. What is the land worth?

A. Well, that land's worth sixty-five dollars an acre. I would be glad to buy it at sixty-five" (R. 31).

They have five or six hundred acres just west of Big Island Chute, in Arkansas County, that is as good as the Big Island land.

"Q. Did you say you would be willing to pay sixty-five dollars an acre for the seventy-two hundred acre tract?

A. Yes, sir.

Q. And the five hundred acres?

A. Yes—they have cut some on there. Yes, sir; taking out what they have cut over, I could handle that at sixty-five dollars an acre.

Q. Would you make that offer?

A. Yes, sir.

Q. Now, at sixty-five dollars an acre?

A. Yes, sir (R. 32).

They have cut about 5,500 feet of commercial good timber per acre on that land. I think the 7,200 acres will average that, and the 500 acres something like that.

I bought 117 acres on Big Island last year, and cut about 8,000 feet per acre. I cut just a little over 900,000 feet off the 117 acres. I do not think the White River Lumber Company lands, as a whole, would average that much. I think it will average 5,500 feet per acre. I was over that land last winter. I logged there adjoining it and went through it.

I bought a piece of land from Mr. Storthz here, of Little Rock, and then I bought a piece of land from the Porters, who live up in Michigan, and some from a fellow that lived in Michigan. I bought several pieces. I paid W. P. Porter and wife $25.00 an acre for 2,856 acres.

(Witness identified a certified copy of a warranty deed, dated January 31, 1920, signed by W. P. Porter and Hattie J.

Porter, to S. B. Dennison, H. F. Linder and J. M. Linder. The deed was introduced in evidence and attached as Exhibit "A" to the deposition) (R. 35).

I am in the business of buying timber for profit. I looked at that piece of timber, he made me that price and I paid it. I guess we made a hundred thousand dollars on the 2,856 acres. We cut the logs and sold the logs. We cut about seven thousand feet per acre from that land and it has lots of timber on it yet. There is about five or six million feet left on it now.

We have been operating there six years, and I guess our profit has run ninety or one hundred thousand dollars.

"Q. Have you bought any other lands—First I will ask you how this land compares with the lands of the White River Lumber Company in question?

A. The White River Lumber Company owns a lot of land adjoining this Porter tract of land.

Q. How is the timber on it compared with the land you bought?

A. Well, I think it runs something like this land.

Q. About the same?

A. Yes. Now, they have cut their timber off of this land adjoining this since 1920; they have done lots of logging in there, right in this particular neighborhood.

Q. Have they cut it all off since then?

A. No; all they cut has been cut since 1920 in that neighborhood.

Q. And how did your land compare with that land before this timber was cut?

A. Well, I expect it would all run about the same in there. They had a lot of land that didn't have anything on it,

and they had a lot of land that had good timber on it. They got some in there that's not been cut yet, that's pretty good timber.

Q. What was their land worth before this timber was cut off, from 1920 on?

A. Well, it was worth twenty-five to thirty dollars a thousand, anyway.

Q. How much?

A. Twenty-five to thirty dollars. A fellow could have given twenty-five to thirty dollars a thousand and made money on it.

Q. A thousand?

A. An acre. An acre.

Q. They could have given twenty-five to thirty dollars an acre and made money on it?

A. Yes, sir.

Q. At the rate you made on it?

A. Yes, sir'' (R. 39).

I bought seventeen hundred acres from L. Storthz and paid him $51,000.00 or $30.00 an acre for it. That land is on White River, in township three south, two west.

''Q. How is that located in reference to the White River Lumber Company's?

A. Well, they own land on the east side of this piece of land.

Q. Touching it?

A. Yes. Then they—on the other—on across the river, over on the east side, in Arkansas County, they own land. Now, all that land has been cut over by the White River Lumber Company" (R. 40).

The deed recites the correct consideration for that land. At one time he asked me $50.00 an acre for it. That was early in 1922, but I got hold of that land by waiting. I made some money, but I did not make any money to holler about on that piece of land. At the time I bought that land, I paid all it was worth.

"Q. And how, with reference to its value, does that land compare with the value of the White River Lumber Company land, except the Big Island and the five hundred acres?

A. Well, that land—they own some land right next to the river, between this land and the river, that they cut a lot of timber off of, I don't know how much but they done a lot of logging in there. I expect it would run about like that land" (R. 41).

"Q. How does the value of the timber compare with yours?

A. Well, it runs about the same; all in that section of the country, the timber is about the same" (R. 41).

When I bought this land from Mr. Storthz, the market was low. It was almost forty to fifty per cent lower than it is now. I sold those logs at a net to me of $17.25 f. o. b. river bank. Now I deliver them on cars free, but I sold them delivered on board cars at DeVall Bluff and I got $24.50 a thousand. The first logs that I ever sold was in 1917 and I sold them for $12.00. In 1919 I got $18.00 for logs. Then the latter part of 1919, I got maybe $20.00 and $22.00 for gum logs. Oak logs have always been, until now, a few dollars higher than gum, but right now gum is the highest. The average value of logs would be about $20.00 during the last seven years.

(The deed from L. Storthz to S. B. Dennison, above referred to, was introduced in evidence and attached as Exhibit "B") (R. 63).

I am familiar with the sale of timber lands aggregating 5,348 acres in Monroe, Phillips and Arkansas Counties, the sale being made by J. T. Wylie of Saginaw, Michigan, to S. M. Bush of Cotton Plant. I worked the trade up and they paid me a commission. I think all of the land was in four south, one west. The consideration was $45.00 per acre. The total amount of money was $240,660.00 and some few cents. I had that deal made myself, but I could not finance it, and turned it over to Mr. Bush.

(The deed referred to was introduced in evidence and attached as Exhibit "C") (R. 66).

That trade started in about 1922, and finally resulted in the transfer of the land on May 24, 1924. They were two years making that trade.

"Q. You have said that the value of land then was about forty or fifty per cent lower than now?

Mr. Buzbee: No, he didn't say that.

A. No, I said logs, between the summer—that is, the summer time of 1922 and right now. You can sell logs, I understand, right now, is exceptional time—there is a good demand for logs right now that we don't often have" (R. 44).

In 1919, I sold that land to Wylie for $25.00 an acre. I am familiar with the number of feet to the acre that has been cut from that land.

"A. Well, I have got—now, understand, my commission on that—out of that land's so much per thousand. So, now, they paid me to cut in there and we have cut on that six hundred acres and we have cut close to four million feet now.

Q. How many feet to the acre did that make?

A. Well, that would make—let's see, nearly seven thousand; sixty-five hundred, something like that.

Q. How does that land compare with the White River Lumber Company's land, exclusive of the Big Island and the five hundred acre tract referred to?

A. Well, they own—the White River Lumber Company owns land adjoining this land all around in that county, maybe, and one piece down in Monroe County that they don't own there, a three hundred acre tract; they own some adjoining that in Phillips County, and one corner, I think, in Monroe County. They cut their land in Monroe County adjoining this in three one.

Q. When was that cut?

A. Well, that was cut in 1918, 1919 and 1920, along in there.

Q. Before that was cut, how did the values of the White River Lumber Company land compare with the values of these lands?

A. Well, I expect it run along about like that land.

Q. About the same?

A. All in that section, yes, sir'' (R. 45).

The consideration for this sale was $45.00 per acre. The consideration has not been paid. They are to pay when they get it.

CROSS-EXAMINATION

I based my ideas of values on transactions in which I have bought and sold lands. I have my partners that live in Memphis, and we have bought these tracts together. They were bought for logging purposes, and I have logged them.

I bought 117 acres on Big Island from J. A. Price, who lives at Ethel, Arkansas. I paid him $2,750.00, about $25.00 an acre. I borrowed the money from S. M. Bush and the deed was made to him. That was purchased sometime in September or October, 1924.

"Q. Now, isn't it a fact that in 1919 and 1920, immediately after the war, there was a great revival of building, and that prices on logs and lumber advanced considerably?

A. Yes, sir; logs went up until the Spring of 1920. After early summer you couldn't hardly sell a log in 1920, you couldn't—I had some contracts that I had made early in 1920 for fall delivery and I cancelled some of them.

Q. It is true, though, that the price of logs, and consequently the price of timber and lands, has varied considerably along in this period, depending on the demand for lumber?

A. Yes, sir; some years you would get more, some years you would get less for logs.

Q. Isn't it also true, Mr. Dennison, that the cost of logging in that country varies a great deal, depending on the seasons and the overflow or lack of overflow from White River?

A. Yes; you get logs hauled some dry seasons cheaper than you do rainy seasons" (R. 48).

The lands about which I have testified, and covered by these deeds introduced as exhibits to my deposition, are located in the same territory as the White River Lumber Company lands and are practically the same character of lands. All of the lands are subject to overflow and are under water from four to six months every year. I figured on having about a six months logging term each year. The sales about which I have testified are the principal sales I have known about. The Magnolia people bought some land from Mr. Storthz in the lower part of Arkansas County and Desha County—they bought six, seven or eight thousand acres of timber from them in the last two or three years. I sold my interest this past year in the Porter land.

I don't value the land worth anything after the timber is off of it. The taxes on the land I bought from Storthz were $415.00 last year; that is, $415.00 on approximately 1,700 acres of land. I do not know what the assessment is. The taxes

on the Porter land are about $360.00 a year; that is, on 2,856 acres. The taxes on the land conveyed from Wylie to Bush are twenty-two to twenty-three hundred dollars on 5,348 acres.

C. A. KIRKPATRICK, a witness for plaintiff, testified by deposition taken March 6, 1926, in substance, as follows (R. 52):

I live at St. Charles, Arkansas County, and have lived there practically all my life. I am forty-four years old. My business is first one thing and another. I have been working in timber some, and at the present time, I am working for Mr. Wylie of Saginaw, Michigan. I have helped cruise timber lands in Arkansas County. I think I am familar with the White River Lumber Company's lands over there. I have been over the Monroe County and the Arkansas County tracts of land more than the rest. I guess I go over it two or three times a year. I hunted quite a bit on it and, of course, a man hunting walks along all over. I have cruised timber and have a pretty good idea about it. All I could go by as to the worth of the White River Lumber Company lands would be hearsay about what has been offered to them, but I have a good idea about what amount of timber is on it.

On the best part of their land, which is located on Big Island, my estimate would be around 5,500 to 6,000 feet an acre. The upper end of Big Island is better than the lower end. I expect there are acres on the upper end there will cut 25,000 feet to the acre, but the average would be from 5,500 to 6,000.

The timber is about 80 per cent gum, 15 per cent oak and the balance ash and cypress.

"Q. Now, you have estimated the timber on Big Island —the White River Lumber Company has about eighteen thousand, five hundred acres in Arkansas County, and about four thousand in Monroe County, and what is the average value —or, if you don't know the value, what amount of stumpage is there on this other land, exclusive of the Big Island tract?

A. Well, there is a piece—I don't know just how many acres, but I know they got some land between Big Island and the hills; there's a bottom in there between Big Island and the hills. That is—well, I guess it is about the same as on Big Island.

Q. Just as good as Big Island?

A. Yes.

Q. Approximately how many acres are there on that?

A. Well, I guess there is three hundred acres, or more.

Q. Now, outside of the Big Island tract and this three hundred acres or more tract, which you have testified about, what amount of stumpage, how many thousand feet to the acre, could you get off the rest of that land?

A. Well, there is one tract that they got that I seen the average on was a little better than forty-nine hundred feet to the acre; while they didn't cut it clean there was some left on it.

Q. Where was that located?

A. That was in four one, I believe.

Q. Four south, one west?

A. Yes, sir.

Q. What county is that in, Monroe or Arkansas?

A. Monroe.

Q. In Monroe County. You say you saw the figures. Where did you see the figures?

A. I seen Mr. Keaton with the books" (R. 56).

The Monroe County land that they got is not quite as good as the Big Island. It will probably average 4,000 to 4,500 feet to the acre. They got some land down below this Big Island tract, in Arkansas County that will go about 4,500 feet to the acre. I do not know what the value would be on the land after the timber was taken off.

I have seen the Phillips County land. The stumpage on it would be about the same.

I saw the Desha County land about six years ago. We cut about four thousand to forty-five hundred feet to the acre on some of it down near the Arkansas River about six years ago.

I know the White River Lumber Company cut some timber this winter on Big Island. They were cutting it at their mill in Clarendon.

CROSS-EXAMINATION

I have heard Mr. Dennison's testimony in reference to the sales of the Porter, Storthz and Wylie tracts of land. I am familiar with the Wylie tract, and have been over the Porter and Storthz tracts several times.

"Q. Are they about the same character as the White River Lumber Company land?

A. I don't think there is but very little difference in them" (R. 59).

W. W. KEATON, a witness for defendant, testified by deposition taken June 10, 1926, in substance as follows (R. 77):

I am thirty-four years old, and live at Clarendon. I have lived there since January 1, 1925, and also lived there in 1922 and 1923. With exception of the time that I have lived at Clarendon, I have lived in Arkansas County all of my life.

I am in the timber and lumber business, and have been with White River Lumber Company, as manager ever since

1919. Previous to that time, I was with them I think, two years, in different capacities.

Before entering the employ of the White River Lumber Company, I was County Surveyor of Arkansas County, engaged in surveying and engineering business. I am familiar with practically all of Arkansas County. I was surveyor practically four years until I resigned to go with the White River Lumber Company. The approximate area of Arkansas County is a thousand square miles, or six hundred forty thousand acres. About twenty-five per cent of the county is timber lands now. Originally Arkansas County was about half timber. A lot of that timber land has been put in cultivation. Practically all that is not in the overflowed areas is in cultivation. All of the White River Lumber Company land is timber land. As a whole it is about the same average kind of timber land as the other timber lands of the county.

I am familiar with the lands sold by Porter, to S. B. Dennison, H. F. Linder and J. M. Linder, about 1920.

"A. The Porter tract of land, as we all know it, consists of part of Hickory Ridge, Caney Point, and Rattle Snake Hill. It is not in the lowest part of White River bottoms. It is on a very high ridge and is considered very valuable for farming purposes. It overflows—I don't suppose it will overflow one year out of ten, and as everybody knows, the higher ground always has the better grade of timber and more gum timber. This Porter tract of land was very good timber. In fact, I think it was as good a tract of timber as I ever saw.

It lays on the north and west side of Esse's Bayou and in going into the timber, after you leave the high upland, you find a second bottom, and this Porter land is the second bottom. Then when you cross Esse's Bayou you drop off into land about ten or twelve feet lower, which is overflowed every year.

Q. What character of timber was on this Porter land?

A. Principally gum and, well, it must have run about sixty per cent gum and about thirty per cent—twenty-five to thirty per cent forked leaf white oak and cow oak, and also

quite a lot of hickory. That's where part of this tract of land got its name as Hickory Ridge, on account of the fine hickory that was on it.

Q. Would you say then, Mr. Keaton, that that land was as valuable or more valuable than the White River Lumber Company land?

A. I would say that it is more valuable than the White River—

Mr. Rose: Or less valuable?

(Witness Continuing): I would say that it is more valuable than any tract the White River Lumber Company owns.

Q. I believe you stated that it had a value for agricultural purposes.

A. Yes, sir" (R. 79).

The White River Lumber Company has a few acres on high ground. One corner of a tract of their land corners on the edge of Rattle Snake Hill, and there is about five or six acres in that. I would say not over ten acres of their entire holdings are on high ground. The balance of the land is in the low bottoms. It has overflowed every year since I have been connected with it. It overflows from sixty days to six months every year; an average of about four months out of the year.

I am familiar with the tract of land owned by Storthz in Arkansas County. I worked for Mr. Storthz two years. During that time I surveyed a large part of his lands, and, prior to that time I was associated with Captain Maxwell at DeWitt, and we jointly surveyed and estimated all of the Storthz land. During the time I was with him myself, I surveyed the tract of land in Arkansas County in township 3 south, range 2 west, which is the tract that he sold to Mr. Dennison. At that time he had twenty-four thousand acres. He has sold quite a lot of land, or timber since that time. The entire Storthz tract is in Arkansas County, and it is just about like the White River

Lumber Company's tract as a whole. It all lays in the same territory and adjoins in a number of places. In fact, in the territory east of Weber they are the only two owners of any consequence. I am familiar with the tract of land sold by J. T. Wylie to S. M. Bush in January, 1924. The Wylie tract is very good timber. Most of it is in Monroe County, in township 3 south, and they have very little waste on the entire tract. It runs very heavy to gum, also some forked leaf white oak on the high parts of it. A small amount does not overflow, but most of it is in the bottoms. A few years previous to 1924, H. B. and T. T. Bateman sold it to Mr. Wylie at $25.00 per acre. It is still owned by Mr. Bush.

There are other large bodies of timber land in Arkansas County owned by individuals. The Storthz timber is approximately twenty-four thousand acres. The L. M. Jones tract of about fifteen thousand acres is owned by an individual, Linah Melvin Jones.

Mr. W. S. Probst, at the time I was surveyor, owned about four or five thousand acres. The Chicago Mill and Lumber Company has about seven or eight thousand acres, and the Henry Wrape Company owns a vast acreage in the western part of Arkansas County, probably three or four thousand acres on Bayou Meto. J. S. Bilby owns a large acreage. I once made a large map of Arkansas County, and I know that he owns a large acreage of scattered lands, about one thousand acres I suppose.

E. L. Stocking owns, or did own, approximately two thousand acres. A. Moss of Almyra, owns approximately two thousand acres. This S. M. Bush land is not in Arkansas County, only a small part of it.

There are hundreds of owners of small tracts from forty acres up to a section. I was only trying to name the ones that own large acreage. There are approximately 150,000 acres of timber lands in Monroe County.

The White River Lumber Company has paid its taxes on lands in Arkansas and Monroe Counties as assessed by the assessing officers (R. 83).

I think, taking the entire White River Lumber company's tract as a whole, it is about the same class and value of timber land as the average for the entire county (R. 83).

"Q. Do you mean to tell me that the White River Lumber Company's land is no more valuable than a lot of little one-horse, forty-acre tracts owned by individuals that is forfeited frequently for taxes?

A. Well, you could pick out a lot of small tracts of land that are worthless. You could pick out a lot of our land that is worthless. As a whole, I say that it's about of equal value.

Q. Isn't it true that there are thousands of acres in Arkansas County on which there is not even one hundred feet of merchantable timber?

A. Well, a hundred feet is a very small amount of timber. If it had one tree it would have more than—

Q. Yes, of course; but there are thousands of acres that haven't even one tree?

A. There are lots.

Q. What would your company give for such lands?

A. It would be worthless.

Q. Then you would not contend that an assessment of that land at four dollars an acre, which has been the case, would be fair to the owner of that land, when your land is assessed at only four dollars an acre?

A. There are thousands of acres of the White River Lumber Company lands that are just as worthless" (R. 84).

I do not mean to testify that the White River Lumber Company's land is not worth more than the cut-over tracts, but I do mean to testify that it is of about equal value with the

entire timber lands of Arkansas County. I testified that the lands of the White River Lumber Company were about the same as the lands of Storthz. I know that sixteen hundred or seventeen hundred acres of the Storthz land sold for thirty dollars an acre to Dennison and others. I bought 1,700 acres from Mr. Storthz about sixty days ago for $12.00 an acre. I did not know that Storthz had held the tract sold to Dennison for $50.00.

When I was working for Mr. Storthz, he tried to get me to sell this land for him to the White River Lumber Company and put a price of $14.00 an acre all around on the entire tract. I was representing both of them and they advised Mr. Storthz they were not interested in the land at the price. He also sold seven thousand acres to Mengel Company at twenty dollars an acre. There is an option now on the balance of the timber at thirteen dollars an acre.

We bought seventeen hundred acres from him on the 14th day of April, and he told me that the balance was under option to Thane Lumber Company for ninety days at thirteen dollars an acre; that is, just the timber. He told me that he was going to give the land to his son to get what he could out of it for fishing and hunting privileges. I never knew of him hanging a price like thirty to fifty dollars an acre on the land.

I have never looked up the assessments of the White River Lumber Company prior to the time I was connected with the Company, but I think the land has been assessed at from four dollars to six dollars an acre.

The Storthz land lays on the river, adjoining the river. Not a very large percentage is on the river, but it is connected by a number of navigable bayous and streams. The White River Lumber Company's lands all lay in range one west, and a large part of it is within a few miles of the river, but not any more favorably located for transporting logs than the Storthz land. The entire tract would cut approximately three thousand feet per acre.

The seventeen hundred acre tract probably would cut four thousand to forty five hundred feet. The seven thousand

acre tract, which he sold to the Mengel Box Company would cut about thirty-five hundred feet to the acre.

The price of logs since 1917 has fluctuated very much.

I stated that the land sold by Porter to Dennison and Linder in 1920 was the best tract of timber I ever saw. I do not know whether the purchasers made a hundred thousand dollars on the deal or not.

The bottom land on White River is subject to overflow. There are some lands near enough to have the advantage of river navigation and still not overflow.

This Porter land lies near Esse's Bayou and the high land or second bottom, extended right up to the bank of the bayou. They had river navigation and at the same time had very little danger of overflow. They logged all winter on that tract of land in the spring of 1920 when logs were valuable.

My company has been cutting a good deal of timber from these lands in Arkansas County. Different tracts of land have cut different. We have cut land that did not cut but around 1,200 feet to the acre. We cut one tract that cut eight thousand feet. That was on the M. H. & L. Railroad, near the Mississippi River, in Desha County, near the Laconia Circle. This is the southwest quarter of section 35, 7, 1. It lays about three miles further east than the body of the White River Lumber Company's land, on high ground, and contains a large amount of cotton wood.

The company owns approximately twenty thousand, eight hundred acres in Arkansas County, sixty-five hundred acres in Phillips, twelve thousand, eight hundred acres in Desha County, and four thousand, four hundred acres in Monroe County. I did not bring a list of holding and am just giving you these acreages as nearly as I can remember them. Big Island contains about nine thousand acres. We own approximately seventy-two hundred acres.

I expect I could pick out an acre on the Island on some high gum ridge, that would produce twenty to twenty-five

thousand feet, where there was a perfect stand of gum timber; but you could not find any tract of forty acres, or of any consequence, that would average anything like that.

Mr. Brogan's estimate on the land sold by Wylie to Bush in 1924 was 5,500 feet. At that time they were operating a cooperage plant at Clarendon and used all classes of logs down as low as ten inches in diameter. They took that into consideration in making their estimate.

I do not know how many owners of timber lands there are in Arkansas County, but there would be several hundred I expect. I think practically all the valuable timber lands are owned by probably a dozen corporations and individuals who are engaged in buying and selling timber lands, or in manufacturing lumber. The lands that these smaller owners own is probably just as good as the larger tracts, but a lot of it is small tracts. I think the lands owned by small owners in Arkansas County are just as good per acre on the average as the tracts that are owned by larger concerns, but the few larger concerns do own most of the acreage. It is true that a great many of the smaller owners have lands which are absolutely valueless. We have several hundred, probably a thousand acres that are worthless and we would gladly let them forfeit for taxes if it were not for the fact that we want to keep our block intact.

I bought stock in the White River Lumber Company and paid twenty-five thousand dollars. I got one-thirtieth of two hundred and twenty thousand, six hundred, between seven and eight thousand dollars (R. 96).

REDIRECT EXAMINATION

I bought stock before the mill was built, and the company had no property except what is represented by the timber lands. I bought on the basis of $17.50 per acre value (R. 96).

"Q. You stated a while ago that it would be possible to pick an acre here and there on Big Island that might cut twenty

thousand feet to the acre. What is the highest you have cut on any tract of land of any size on Big Island?

A. On Big Island? We logged—we cut the timber on the southwest quarter of section 10, west of chute, and fractional sections 14 and 15, south of chute, township 5 south, range 1 west, containing 590.56 acres. From that we got 2,403,661 feet, which would be slightly over four thousand feet per acre. That tract of timber was cut clean, during the years 1920 to 1923, logged by Mr. J. B. Horton and S. H. Moore, and that is the particular tract of land referred to by Mr. Dennison in his deposition as the five hundred acre tract laying west of Big Island Chute. We logged section 22 and northwest quarter of section 23, township 4 south, range 1 west, 549.36 acres. We logged that in 1920; logs were cut by Mr. S. M. Winters. We got 1,604,674 feet, which is approximately three thousand feet per acre.

Q. Do those tracts represent an average of what you have been able to cut on Big Island?

A. They do (R. 97).

The two thousand acres on Big Island, not owned by the White River Lumber Company, are owned by E. A. Rolfe of Forrest City, and the Union & Planters Bank, Memphis. There is also a tract of 117 acres owned by S. B. Dennison and forty acres owned by S. M. Bush.

We have cut some other tracts on Big Island besides those I have testified to. They show about the same average (R. 98).

RECROSS EXAMINATION

I said that it would be possible to pick out an acre on Big Island which would cut twenty to twenty-five thousand feet. I did not pick out any acre. I have given you actual records of the amount of timber we cut from the land we have cut on Big Island (R. 98).

J. C. CASH, a witness for defendant, testified by deposition taken April 6, 1926, in substance as follows (R. 100).

I live in Prairie Township, Arkansas County, and have lived in Arkansas County twenty-one years. I was assessor of Arkansas County four years—1919 to 1923, inclusive.

I had charge of the assessment of lands and other property in the county with the township boards of the county.

"Q. How did you make the assessments of property in those years, just explain that method?

A. Well, I might go a little behind, probably, to before my term as assessor: Mr. Montgomery was the assessor, and these boards could come in and they established, as I understand it, the valuations of prairie and timber lands—with the timber lands. At that time in 1919, they assessed prairie lands at twelve dollars and a half an acre without improvements, and timber lands at five dollars an acre, and I adopted that plan when I was made assessor to follow Mr. Montgomery; throughout the county it was assessed that way the best—as nearly as we knew how.

Q. Now, how did you make assessments with the township boards, explain that system?

A. Well, whenever we came to any piece of land and so forth—Now, most all the parties, that is, the residents here, they met with us at our assessment places, you know and if they didn't, why, they were supposed to have—to send a representative where these boards of the township met. But they didn't always come, and we made the assessment of these lands as nearly equal on all the timber lands as we could.

Q. You were endeavoring to assess all timber lands as nearly equal as you could?

A. As nearly equal as we could, yes, sir. Now, there were some swamp lands that had but very little timbers on them that were assessed down as low as two dollars and a half an acre, and some were raised a little higher where they claimed that the timbers were better.

Q. Now, did you use the same method in making the assessment of other property in the county?

A. As nearly as I knew how and as these boards advised."

"Q. What effort, if any, did you make to get all property in the county assessed on an equal basis—that is, a uniform basis?

A. That is just as I said in the beginning, you know, that those valuations were established by these members of these boards over the county, that they made all assessments as I understood it. Well, then, in—I am not positive whether it was 19—I think it was 1921, there was one township in this county that they raised lots of these timber lands to ten dollars an acre—well, that was the Arkansas Lumber Co., and Mr. Gibson and Mr. Burnett were representatives of that company here and they made a protest. Well, you see, these—the assessors are supposed to call the county board to meet here on about the twentieth of August and I recall that they came in with their protest and there was a motion made before this board to appoint a man—they claimed—several claimed that these assessments were not right—and that they appoint a man to go over these books and to equalize all these assessments. And they appointed Mr. E. J. Spratlin and he changed a good deal of our assessments that year, but how much, I don't know.

Q. That was done under the supervision of the board?

A. Yes, sir.

Q. And that was an effort to make the assessments uniform?

A. Uniform, yes, sir; all over the county, in these timber lands, and he was supposed—he had been in the real estate business here for many years and he was supposed to know more about the values of these timber lands than any other man, and he was appointed and did go over and tried to equalize all these assessments" (R. 102).

There was no discrimination as between these timber lands and prairie lands, rice farms, etc., in the manner of as-

sessment, except as I told you in 1919 we assessed the prairie lands at $12.50 an acre and the timber lands at $5.00. That was on the theory that the prairie lands were worth considerably more than the timber lands. We assessed the raw lands at so much and totaled the amount. The timber lands were assessed the same way where there were improvements on them, but where there were no improvements on them, they went straight.

"Q. Well, is it a fact, Mr. Cash, that during your term of office, regardless of the basis of values used in making assessments, that you and your boards endeavored to assess the property of the county on as near a uniform basis as possible?

A. Yes, sir.

Q. You think you did that?

A. Did it as near as I knew how. And then a great deal of this non-resident land, which is mostly timber land, of course, there was no one there to meet us at the assess—at our assessment days, and I just entered that on the book as it was prior to my incumbency (R. 103).

Q. Do you know about what basis of valuation, that is, what percentage of actual value property was assessed at during those years?

A. I couldn't say the actual value, but not exceeding, I would suppose, thirty to thirty-three and a third valuation. Their valuation, it was supposed to be fifty per cent, but I don't think any of it was assessed above a third.

Q. That is, any of the property in the county?

A. Yes, sir; as a whole; and I think a good deal of it less than that, at the value at that time.

Q. Well, your principal efforts were to make the values uniform?

A. Uniform as a whole, yes, sir" (R. 103).

To the best of my recollection, these timber lands were assessed at $5.00 an acre in 1919. I think they were assessed probably $4.00 in 1921, on account of the 1920 slump—timber lands, prairie lands, and everything. I expect that Arkansas County is pretty near divided half and half between timber lands and other lands. There is a big lot of timber land in this county. It is my understanding that the greater portion of it is cut-over land. I have never been all up and down the river bottoms. I am told there is a good many large tracts that have virgin timber on them. Take the Melvin Jones land on the Arkansas River, they tell me there is fine timber on that. The consideration of whether the land had valuable timber or cut-over timber was left to the township boards.

I am not familiar with the lands belonging to the defendant. I have been up and down these rivers some, but I do not know the land. I could not look at timber land and tell how much timber was on it, because I am not a lumber man.

If a taxpayer came and told me that a piece of property was worth one hundred dollars and my office would find out that the property was worth one hundred dollars, we tried to put it in at $50.00. I can't say what the percentage of actual value of assessments was because I don't know. I know there was lots of this land that was contracted here when we were assessing it for $12.50 an acre that was contracted for $50.00 an acre, but lots of that land has been forfeited since. I do not think the assessments would average thirty-three and a third per cent, any of that prairie or timber land. I expect they would average about that amount.

Q. Now, Mr. Cash, you stated the boards—township boards, assessed these lands?

A. Yes, sir.

Q. Did they assess all the lands of the White River Lumber Company?

A. In their respective township" (R. 106).

Of course, it would have been impossible for me to have gone over the 18,500 acres of land. There are some few individuals that have good, valuable timbers and then some that have not. Dave and Melvin Jones have a big lot on the Arkansas River. They do not own as much as the larger lumber companies.

REDIRECT EXAMINATION

The township boards were supposed to be familiar with all of these lands, and I sat with them in making the assessments. Opinions differ very greatly as to the value of real estate, and the value in this country has fluctuated a great deal in the last six years, depending on rice conditions and timber market conditions. The resident people here usually appear before our board, and some of the non-residents, or their agents.

RECROSS-EXAMINATION

I do not think Mr. Keaton, of the White River Lumber Company, ever came to me about the assessment of the White River Lumber Company's land. I have no idea of the value of the land.

M. F. MONTGOMERY, a witness for defendant, testified by deposition taken April 6, 1926, in substance as follows (R. 108).

I live at DeWitt. I was born in Arkansas County and have lived in DeWitt ten or twelve years. Have lived in Arkansas County all of the time. I was Assessor of Arkansas County from 1915 to 1919, inclusive; four years just prior to Mr. Cash.

"Q. Mr. Montgomery, what method did you adopt for assessing the property of the county?

A. Well, we had the township board proposition; two men of the township and the assessor would constitute the board, the assessor being chairman of the board, and we would just try to classify these lands an assess them, timber lands at a certain rate, prairie lands at a certain rate, and I believe we had a little in probably two townships—we had some over-

flow land and we didn't assess that quite as much as we did the other. Now, I don't know whether that was before—when was that township board proposition—when was that? I don't believe that was but for the two last years of my office—I am not sure. I don't think we had the township board proposition the first two years I was in office.

Q. You did have it the last two years?

A. Yes, sir.

Q. In making the assessments, either yourself before the township boards were created, or working in connection with them afterwards, did you endeavor to assess all of the property of the county on a uniform basis?

A. I did.

Q. Did do that as far as you know?

A. Yes, sir.

Q. You made no effort, did you, to favor the White River Lumber Company or any other timber owner?

A. I did not.

Q. And did not favor them as far as you know?

A. I did not, no, sir" (R. 110).

CROSS-EXAMINATION

I stated that in assessing the property of the county, I assessed the timber lands as a class. We would classify the hill farms at say four or five dollars, and then classify the better class of farming country together, and group it all together. We just took the timber lands as a whole, I did not make any investigation to see what was virgin timber and see what was cut-over land. I did not know how much timber was on the land or the value of the timber. I have had no ex-

perience in estimating the amount of timber on a tract of land. If I had evidence that any of this land was worth seventy or sixty-five dollars an acre I would have raised the assessment.

"Q. Did you have any evidence produced before you of the value of the land at all?

A. Nothing more than just what the township board would give at that time, and I am not sure now as to the date, but I think the first two years we used to have the old system of the county board.

Q. Mr. Buzbee: Board of Equalization.

A. Board of Equalization, which would meet here; after the assessor would make his rounds over the county, then they would go over the whole book, just three men from different parts of the county would go over the whole thing" (R.111).

It would hardly have been possible for members of the township boards to have inspected all of these thousands of acres of timber lands personally. When we made the assessments, I relied on the men in the township for this information, because a man over in the eastern part of the county would know more about that proposition than I would, living here. I do not know whether I have ever seen these lands of the White River Lumber Comp[illegible], or not.

REDIRECT EXAMINATION

"Q. You followed that same method, did you not, Mr. Montgomery, in assessing farm lands?

A. Yes, sir.

Q. You didn't undertake to inspect each farm, did you?

A. Couldn't have done it; only had three months to make the assessment in.

Q. You did have on the township boards men who were familiar with the property in their different sections?

A. Men appointed by the county court.

Q. Did you classify the farm lands somewhat along the same lines?

A. Yes, sir.

Q. And cattle and horses and stock of that kind?

A. Had a uniform rate for that, you know. Of course, beef cattle, I would assess those more than the others, but just taking a common herd of cattle, just assessed them so much a head.

Q. You didn't undertake to inspect each cow?

A. Couldn't do it.

Q. Or calf?

A. No, sir.

Q. So that the method you followed in assessing the timber lands was exactly the method you followed in assessing all of the property of the county?

A. Yes, sir—all other personal property, yes, sir, as well.

Q. And in doing that you endeavored, as far as possible, to make these assessments on a uniform basis as concerned values?

A. I did.

Q. You had all the information before you, didn't you, that the township boards had about the property in the various townships?

A. Yes, sir'' (R. 112).

RECROSS EXAMINATION

We valued rice farms more than timber land because they would produce more. A tract of land that had five or six thousand feet of merchantable timber to the acre could be worth more than a rice farm. I raised timber lands and farm lands whenever there was sufficient proof brought to bear.

I received a certificate from the railroad or tax commission stating that property should be assessed at fifty per cent.

"Q. Now, if you were given a piece of town or country property and were told that property was worth the reasonable and fair cash value of fifty thousand dollars, what would you have assessed that property at?

A. I would have wanted to assess it at half value, but there is none of them that assessed their property at that value, I am satisfied. While they were supposed to do that, but few did do it" (R. 55).

I could not say whether the majority of the large tracts of timber lands are owned by just a few parties or not.

REDIRECT EXAMINATION

"Q. Isn't it true, Mr. Montgomery, that the assessing boards, the township boards, would not assess property at fifty per cent of its actual value?

A. Yes, sir.

Q. When you stated that if you had been—if the parties had come in and told you that the property was worth fifty thousand dollars you would have tried to assess it at twenty-five thousand dollars, you would have been controlled then by the action of the township board, wouldn't you?

A. I would have had to, because there was two of them and I was only one and it takes a majority to rule.

Q. It is your opinion, as you stated, I believe, that property hasn't at any time been assessed at an average of fifty per cent of its value?

A. I don't think it has, Mr. Buzbee.

Q. Mr. Rose: What per cent has it been assessed at Mr. Montgomery?

A. Well, I—I don't know whether it would average a third or not, Mr. Rose, I am not sure; I never figured it out.

Q. Mr. Rose: But you would have assessed it at fifty per cent if you knew—

A. I would try.

Q. Mr. Rose: What was your answer?

A. I would have tried to, yes, sir" (R. 115).

A. N. BEST, a witness for plaintiff, testified by deposition taken May 6, 1926, in substance as follows (R. 117):

I live in the southern part of Arkansas County, Chester township. I am in the stock business; a little farming, justice of the peace, school director, president of the school board, etc. I am a member of the township board for Chester Township. I have been a member of the board about six or seven years at least. I sat on the board when it assessed the timber lands of the White River Lumber Company in Arkansas County. The land was assessed at $4.00 an acre.

We did not have time to go over the land and view it, and we just assessed it about like the other. We assessed the virgin and the cut-over lands all the same. We assessed property in Arkansas County for those years from about thirty to fifty per cent valuation. If we had been told or had sufficient evidence that the value of those lands, or any other lands, was $60.00 an acre, we would have assessed them at about thirty.

CROSS-EXAMINATION

I only sat in the assessment of lands in that township. I have lived there 25 years, or more, and am pretty familiar with that section of the country, but I lived on the prairie, and the timber land, most of it, is on the White River and Arkansas.

I own land down there I haven't seen for 15 years. It is timber land. I have got a boy about 23 years old, and he looks after it for me. I do not recollect exactly how much it was assessed for, but I do not think it was over $4.00 an acre. We assessed White River Lumber Company lands on the same basis that we assessed other property in the township. "I looked at it this way—I didn't know that some had been cut-over—didn't know whose it was, just done what was just." I did not undertake to favor the White River Lumber Company. We tried to discharge our duty and assess all property in the township on about the same basis. I didn't undertake to make a critical examination of all of the property I assessed. "We did what we thought was right."

The township is about six miles square. I am familiar with the prairie lands, all of it. We have a right smart prairie lands in that township I am not familiar with the bottom lands. I have a general knowledge of the kind of land and the timber that grows there. I mean that I never cruised and ran out the lines.

REDIRECT EXAMINATION

My lands assessed at $4.00 an acre are worth about $8.00. If the land of the White River Lumber Company was worth $60.00 or $75.00 an acre, that would not be a uniform assessment with my land. I have a Ford automobile that I paid $505.00 for. It is assessed for $250.00.

I do not know now the value of the timber lands of the White River Lumber Company. If I had inspected the lands, I could not have estimated the number of thousand feet to the acre.

Most of my timber lands has been cut-over. I have eighty acres in one spot and 160 acres in one spot. Part of it was cut seven years ago, and part of it as late as five years ago. The other member of the township board was born in the township. So was his mother.

F. E. STEPHENSON, a witness for the plaintiff, testified by deposition taken April 6, 1926, in substance as follows (R. 123):

I live at St. Charles, Arkansas County, and have lived there, or in Prairie Township, all my life. I lived in the lower end of the township up until about six years ago. I have been Assessor of Arkansas County since 1922; this is my fourth year.

I assessed the property of the White River Lumber Company in 1923 and 1925. I assessed real estate every other year.

Q. "Now, what was your manner of assessing?

A. 1923 it was—it had all been assessed, and you know the tax book—or, the assessment book is made out, the old value is there, so the assessing board—Mr. Dupre over there was one of the board, and some of the others that had been on the boards with the former assessor, Mr. Montgomery, told me that they had taken four dollars as a basis for timber lands and ten dollars for prairie lands; so they said they thought that was a fair value and was the basis that they had taken, and unless we knew something different, some cause for it being decreased or increased, we left it at the old value.

Q. What did you do as to this land of the White River Lumber Company?

A. I placed it back just about like it was; there might have been some few changes. Mr. Keaton told me that they were satisfied with it and thought it was about right" (R. 124).

Mr. Keaton is manager for the White River Lumber Company, and the assessor of the board also told me the same thing. I did not make an inspection of the timber lands. I have been in the bottoms some, and I might have been on some of the land, but I would not have known whether it was the White River Lumber Company's or others. I do not know how to estimate standing timber. The Railroad Commission sent a certificate to me requiring that property be assessed at fifty per cent.

"Q. And what has been your method in assessing?

A. Well, I have assessed, and I might think at the time I was assessing I would get about fifty per cent, but some time later I would find out I was wrong. But where I absolutely knew anything of it I have tried to go on the fifty per cent basis. But some will tell you that they think its only about twenty-five, some thirty-three and a third per cent.

Q. And you have endeavored to get fifty per cent then, where you knew the value?

A. Where I absolutely knew it, yes, sir.

Q. In other words, if you were given a piece of property in the town of DeWitt or in the town of Stuttgart, or a piece of farm land, and you were told that property was worth fifty thousand dollars, the fair cash value, what would you assess that land at?

A. Well, to allow for depreciation and everything, if it was fifty thousand dollars, why, I believe that about one-third would be near about what it would be, of the first value, the fifty thousand dollars.

Q. Well, I mean of the present value. Then, if you were given a present value, after allowing depreciation—

A. And at fifty thousand dollars?

Q. At fifty thousand dollars at this time.

A. Well, I would assess it somewhere about twenty or twenty-five thousand dollars.

Q. The average assessment over the county, what is the average assessment?

A. Well, I would think about thirty-three and a third.

Q. Some goes higher and some lower, does it?

A. Yes, sir; some times.

Q. And the average would be?

A. Something like that, yes, sir" (R. 126).

I think the White River Lumber Company, Mr. Storthz and Anderson-Tully Lumber Company, a company that owns the land up and down Bayou Meto, and the Wrape Lumber Company are about the biggest owners of timber lands.

"Q. Then this timber land has just been assessed as a class, as I understand you to say?

A. Yes, sir; all about the same—with one exception; there is some land up in here on Bayou Meto that belongs to this company that I just spoke of—

Q. What company?

A. Long Bell, used to be—it seems that they have sold that, but it was the Long Bell Lumber Company, and we raised that to ten dollars an acre this last year from, I think, six, because there is none of the timber been cut off of it they say up there, and I notified them of the raise and they didn't kick on it; they sent me a list of their land and what it had been assessed at, and I just put opposite that what it was raised to" (R. 127).

I do not know how much of the White River Lumber Company lands have been cut. I know there has been a whole lot of it, because they have been cutting over there for five or six years.

I made my assessments in connection with the township boards. They are composed of citizens from each township. One of the boards has been there ever since I can remember. One had been there for some ten or fifteen years. I doubt if they had been on the lands. They might have been, I cannot say about that. This last year, one of the same men helped me that helped the first year, and I had another man that has been there for ten or fifteen years on the board. We followed the same system all over the county in working with the township assessing boards. When they started out with the township boards, it seems that they had all established as a basis $4.00 for timber lands, and ten dollars for prairie lands, and we used about the same basis like we did on cattle or stock of that kind. Whenever we found occasion to make changes, we made them.

"Q. Did you and the boards make an effort, was it your purpose to assess all property in the county on about the same basis?

A. Yes, sir.

Q. You did that as far as you know?

A. As near as I could. Sometimes you will strike a township board, like on the valuation of stock or anything, some boards will just want to put it some lower and higher; and you can tell them, but they have the right to change the list, you know, after a man makes his assessment, and sometimes they lowered the assessment after a man assessed, sometimes they would raise it.

Q. Nearly all of the timber lands along White River are overflow lands, aren't they?

A. Yes, sir; practically all of them.

Q. They are not fit for cultivation?

A. No, sir" (R. 128).

I hardly think it would have been possible for all of the members of the township boards to cover all of these timber lands. At the time I was doing what I thought must be about right. I followed the method of the former assessor. If I had had convincing evidence produced to show timber land was worth sixty-five dollars an acre, I would have raised that assessment. I did not have any such evidence. I had what was told by others. "Some would tell you it ought to be so and so, and some tell you it was enough." I talked to Mr. Keaton about it.

We had heard that it had been assessed at more than that in Monroe County, so I sent Mr. Keaton word about it. He called me up over the phone, I talked to him about it, and he said he thought that was a fair value, four dollars an acre.

In making the assessments, I would have the book and the board would be around and we would just agree on a certain price, and, of course, I saw the figures down on all of it.

"Q. Now, some of it the township board didn't appraise, did they?

A. Well, now, take like the White River Lumber Company, it would take so long if you took every separate tract, and they just agreed on an average of four dollars an acre, so I just extended the figures out—figured it out about that way, some may be a little less, where you strike a place that you know is swampy and nothing on it—it wouldn't be right to assess it at that—some may be possibly a little more. But four dollars was the basis" (R. 130).

"Q. You had, I believe you stated, Mr. Stephenson, the help of the township boards, and then you also stated, as I understood, that people would tell you different things about it; that is, you talked with different people about valuations?

A. Well, I just heard them talking about it. Probably after I was through they would discuss it. Since this has come up, you know, I have heard different ones talk about it, but I still wouldn't know how to take it, because some will tell you one thing and some another.

Q. Well, that is nearly always true as to the valuation of property, isn't it?

A. Yes, sir" (R. 130).

REDIRECT EXAMINATION

I made no investigation except taking the figures of the former assessor and talking to Mr. Keaton and with the township boards.

Now, wait a minute. I did write the assessor—I started to tell you that while ago—when I heard what it had been assessed in Monroe County, I wrote the Assessor of Monroe County about this. That is what we agreed on, the township board and myself, in regard to this land, that I would write to him about it and if it had been assessed up that high we would raise it, because we didn't—

"Q. Up how high?

A. To seventeen dollars and a half an acre; that is what we had heard—just hearsay. So I wrote to the Assessor of Monroe County and I didn't hear from him for a long time, and finally I got a letter from him—after I had talked to you, you know—and I think I have the letter at home—and I believe he said about five dollars an acre was what they had it" (R. 131).

He did not say whether it was virgin timber or not. I do not know that they raised the virgin timber to $17.50 last year.

S. B. DENNISON, a witness for plaintiff, testified by deposition taken September 24, 1926, in substance as follows (R. 133):

I was on Big Island two days of this week. I have been there lots of times. There are some lands in Arkansas County not as good as the White River Lumber Company's lands, and some as good as theirs is, but there are no large tracts in Arkansas County, that I ever saw that was as good as the White River Lumber Company's. There are timber lands on the west side of Bayou Meto that I never was on, but I have been on practically all of the timber lands there in the White River bottoms. There are no small owners any more that I know anything about. The cut-over timber lands owned by the small owners haven't got much value.

I think virgin land in large tracts is more valuable than the small tracts. More of it is in a body and can be handled easier. You could interest more people in a large tract than in a small tract.

We cut the timber off the Porter land and it cut about six thousand feet per acre. The White River Lumber Company's lands adjoins it on the east in several places, and they had land laying east and north, and it had fine timber—a great deal better than the Porter land. It would be as good as that timber land in that neighborhood. Big Island is better. It is the best tract in that whole country.

All of the timber lands overflow. I have been over the Storthz land. A good many years ago, before Mr. Storthz owned it, the Weber-Farrell people owned it and put in a mill. They cut over a lot of this land and they left a great many logs, I think three or four million feet, that rotted. All that was practically cut over a good many years ago. That was not very valuable. It did not have any timber on it. Thousands of acres never had any timber. That is a way down the river and in that low flat country there is not any timber. Mr. Storthz had some land that had good timber on it, but I am speaking of this that sold the other day to the Thane Lumber Company. I don't think that down there is worth anything like a fourth of the Big Island tract at the time it sold. I don't think the land sold by Wylie to Bush is a better tract of land than the White River Lumber Company's entire tract, but it is a good tract of timbered land, and lays in the same vicinity and adjoins in several places the White River Lum-

ber Company's land. They (Wylie and Bush) had only a small piece on Big Island. They cut about 330,000 feet approximately off of the forty-five acres on Big Island. I think the White River Lumber Company's land is more valuable than the Wylie tract. It is easy to log. You have got the river on one side and the chute on the other and you can haul it for less money than the other.

I do not know of any value on cut-over timber lands in Arkansas County. A bank at Memphis owned a 2,800 acre tract and telephoned me that they had an offer of $3.00 an acre, and asked my advice about selling it at that price. I advised them not to take it. If the bank was able to hold it it might be worth more money sometime later, but I would not give three dollars an acre for any cut-over land myself.

The land that the White River Lumber Company cut on Big Island, was good timber, but I do not think they cut very far back, because the water was up.

CROSS-EXAMINATION

I did not keep any account of the land and timber cuttings and transactions of the White River Lumber Company. The only thing I know is just passing by where they are operating and having land adjoining. I have never been connected with them nor had charge of their lands in any way. I have done some work for Mr. Storthz. In speaking of the Storthz land a while ago, I was referring to the piece I understand had recently been sold. I understand that involved about 13,000 acres.

"Q. Hasn't the White River Lumber Company a lot of land that has been cut-over?

A. Yes, lots of it.

Q. That cut-over land of theirs is not worth any more than other cut-over land, is it?

A. No, sir.

Q. All of that timber land is practically worthless after the timber is gone?

A. Yes, sir.

Q. So there is no value connected with it except the value of the timber?

A. That's all; yes, sir'' (R. 143).

E. A. Rolfe owns six or seven hundred acres on Big Island, and the Southwestern Veneer Company owns close to a hundred acres. The Rolfe land was good land before the timber was cut. I helped to log that, and measure the logs that came off of that. They cut eight or nine thousand feet. That was in 1918 or 1919. Rolfe is an individual.

REDIRECT EXAMINATION

''Q. Mr. Buzbee asked you if a great many of the lands of the White River Lumber Company were not cut-over lands and you answered that they were. Were your estimates in your former deposition and your estimates today based on the good lands alone, or did they take into consideration the good and bad?

A. Well, I meant the lands not cut-over. I wouldn't want to buy any—they cut their lands pretty clean where I have seen.

Q. Now, when were those lands cut over?

A. They begin operating down there, I think, along in 1919 or 1920; may be latter part of 1918, but some time then; from 1918 to 1920.

Q. Well, your estimates of value—isn't it a fact that most of the timber lands in the county are partly cut-over?

A. Yes, sir. Now, they—it's been cut over on the river and in the bottom, for the last five or six years.

Q. The figure you put on the White River Lumber Company's land on Big Island—did you mean to say that you would give sixty-five dollars an acre, or get a purchaser at that figure, for the entire tract?

A. For what hadn't been cut over.

Q. And how much has been cut over?

A. I don't know. I don't remember but two or three hundred acres cut; but I don't know.

Q. How about the land outside—off of Big Island? Your figures you have given in your former deposition—did you take those lands as a whole? You didn't take simply one good acre and include—

A. Only that the timber was on, didn't I? I don't remember. Most all of their land south of Big—my recollection is that nearly all the lands south of Big Island has been cut in Arkansas County.

Q. What figure did you put as the value of the other lands, outside of Big Island, of the White River Lumber Company?

A. I think, before they were cut, at thirty dollars an acre.

Q. And you would want to deduct the value of the logs taken since 1919 on that basis?

A. Yes, sir. I wouldn't say it was worth that now; cut over. I would say it was practically worthless now (R. 145).

RECROSS EXAMINATION

"Q. The White River Lumber Company has had lots of timber stolen in Desha and Phillips Counties?

A. Mr. Buzbee, there's millions of feet of timber stolen all over the lower end there, up to the foot of Big Island. I

expect the White River Lumber Company has suffered the loss of millions of feet of timber from timber thieves. I wouldn't say Perry Martin did it, but it—

Q. If any timber was cut off the land it was damaged that much?

A. Yes, sir.

Q. When that timber was cut off, whether by timber thieves or anyone else, the land became practically worthless?

A. When it was cut clean; yes, sir. They only cut timber that would float—ash, cypress and cotton wood—none of that grew up in St. Charles in any large quantities. On the lower end there was lots of cotton wood, cypress and ash. I think in recent years they have got so they can float gum and maybe oak.

Q. You don't pretend to say accurately, do you, what lands of the White River Lumber Company have been cut?

A. I don't say the sections. I know they have cut a great deal in Arkansas and Monroe, and some in Phillips County" (R. 147).

REDIRECT EXAMINATION

There has been a lot of timber stolen on the lower end of White River. I think everything that was worth much that would float was stolen from way down. That has been twelve or fifteen years ago. I don't think any has ever been stolen from Big Island. There might have been a few trees ever now and then, probably some ash and cypress.

"Q. What proportion of the county has timber been stolen from?

A. Most of it down on Lagrue; it—

Q. What proportion of it—what per cent?

A. I expect about forty per cent's been stolen in Arkansas County" (R. 148).

W. W. KEATON, a witness for defendant, being recalled, testified by deposition given November 29, 1926, in substance as follows (R. 149):

I have examined the map of Arkansas County, made by F. M. Quartermous. The map is approximately correct, and the shadings show with approximate correctness the different characters of land. I have, also, examined the stipulation entered into by the parties to this suit and marked "No. 1." The conveyances shown in said stipulation have been numbered and lettered in red ink, and the map referred to has been numbered in red pencil. The numbers on the map approximately represent the location of the lands described by the conveyances referred to in said stipulation.

The blue marks on the map correctly indicate the lands purchased by me from L. Storthz for about $13.00 per acre. The legend on the map correctly indicates on the map the lands there described.

The lettering on the map shows with approximate correctness, the lands of the White River Lumber Company and of Storthz, in Arkansas County.

"Q Mr. Keaton, are all of the lands of the White River Lumber Company well timbered and valuable for timber purposes, or are any of the lands without timber?

A. Much of the land is without timber. There are several thousand acres—I won't say several thousand acres—there's a very large acreage of their land that is—that consists of lakes, bayous and other open water streams, which are not deducted in figuring the acreage. The government survey only deducts acreage from navigable streams. There's one lake near the mouth of Lagrue that contains more than a half section in one body. There is another—that is Goose Lake. There is another lake on the upper end—near the upper end of Scrub Grass Bayou, called Alligator Lake, and also Yonker

Pin Lake and Prairie Lake. Each of those lakes contain several hundred acres, not shown—not deducted from the acreage in the government survey—government plats.

Q. Is there any of the land which is not in water but which has no merchantable timber?

A. There is a large amount of the land that doesn't have any timber—any merchantable timber on it. I could not say the exact, I wouldn't try to say the exact amount I think wouldn't have any timber on it.

Q. Has it ever had any timber on it, or since the White River Company has owned it?

A. Never has.

Q. Has the White River Company lost much timber by depredations of trespassers?

A. They have suffered very heavily on the land that's near the river—near the streams. Most of the ash and cypress has been taken from the lands, and other kinds of timber that would float, with the exception of gum.

Q. You mean that has been taken by trespassers, without the consent of the White River Lumber Company?

A. Yes, sir (R. 151).

(The map referred to was introduced in evidence and by agreement made an original exhibit in this court.

The timber cut by the White River Lumber Company, as shown by answers to interrogatories, has been cut from different parts of the land, some on the extreme upper end and some on the extreme lower end. There has been a large amount cut from Big Island. I wouldn't like to say how much without having my records. We have cut from approximately a thousand acres on Big Island. What we have cut, we have cut clean.

We submit, for convenience of the court, a recapitulation of assessment statistics shown by the testimony:

Considerations and Assessments Property Covered by Conveyances Testimony of S. B. Dennison.

		Percentage of Assessment
Exhibit A (R. 60). W. P. Porter to S. B. Dennison, et al., Jan. 31, 1920, Consideration (2,856 acres; $25.00 an acre)	$71,402.65	
Assessment (R. 184)	11,440.00	16% +
Exhibit B (R. 63). L. Storthz to Dennison, December 22, 1922, Consideration (1,700 acres)	$51,000.00	
Assessment (R. 192)	6,720.00	13% +
Exhibit C (R. 66). Wylie to Bush, January 15, 1924, Consideration (558.06 acres)	$25,067.70	
Assessment (R. 198)	2,240.00	8% +

RECAPITULATION OF ASSESSMENT LISTS FILED

Defendant's List (350 Transfers) (R 162): Considerations	$3,068,851.64	
Assessed Value	615,106.20	20% +
Plaintiff's List (240 Transfers) (R. 203): Considerations	534,586.27	
Assessed Value	274,315.20	51% +
Combined List (Excluding Duplicate Conveyances): Considerations	3,410,702.93	
Assessed Value	806,651.40	23% +
Combined List (Excluding Duplicate Conveyances, Quitclaims & Special Warranty Deeds): Considerations	3,363,412.93	
Assessed Value	762,211.40	22% +